91-480

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

VS.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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QUESTIONS PRESENTED

1. Does § 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a), preempt California Civil Code § 3111, which permits fringe benefit trust funds to record and foreclose mechanics' liens to secure payment of contributions owed to the funds for work performed by fund participants on the liened property?

2. Does a state lien law, which creates a security interest in improved real property to protect the pension and health benefits of employees who worked on the property, and which is part of a larger statutory framework to protect the workers' entire wage package, "relate to" ERISA-regulated employee benefit plans in a manner which triggers the preemption clause of § 514(a) of ERISA?

3. In enacting ERISA, did Congress intend to strip employees who receive pension and health benefits from multi-employer trust funds of the protection of state lien laws, while leaving the lien rights of employees who receive fringe benefits directly from their employers undisturbed?

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Cases

TABLE OF AUTHORITIES CITED

CASES

TABLE OF AUTHORITIES CITED

CASES

Constitutions

Statutes and Codes

TABLE OF AUTHORITIES CITED

STATUTES AND CODES

Other Authorities

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Petitioner Carpenters Southern California Administrative Corporation respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California entered in this case on June 20, 1991.

I

OPINIONS BELOW

The opinion of the California Supreme Court (Appendix A, *infra*) is reported at 53 Cal.3d 1041. The first decision of the District Court of Appeal in this action (Appendix B, *infra*) is not officially reported. The order of the California Supreme Court directing the District Court of Appeal to reconsider its initial decision (Appendix C, *infra*) is not officially reported. The second opinion of the District Court of Appeal (Appendix D, *infra*) is not officially reported.

II

JURISDICTION

The opinion of the California Supreme Court was filed on June 20, 1991.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

This Petition is timely filed with this Court under the provisions of 28 U.S.C. § 2101(c).

III

STATUTORY PROVISIONS

The relevant statutory provisions are: (1) California Civil Code § 3111; (2) California Civil Code § 3110; (3) § 514(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(a); (4) § 514(c) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(c); (5) § 502(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a); (6) § 515 of the Employee Retirement Income Security Act of 1974, as subsequently amended, 29 U.S.C. § 1145.

Pertinent portions of these statutory provisions are reproduced at Appendix E, *infra*.

IV

STATEMENT OF THE CASE

A. Preliminary Statement

The California Supreme Court has erroneously held that § 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") preempts a California statute that facilitates the collection of fringe benefit contributions from delinquent employers by employee benefit trust funds. In so doing, the California Supreme Court has misapplied the law and reached a result that is flatly contrary to the language and intent of ERISA —the very federal law that supposedly preempts the statute. The result strips employee benefit trust funds of a valuable tool for

assuring that employers make fringe benefit payments on behalf of covered employees. Contrary to both federal and state policy, the decision below protects delinquent employers at the expense of innocent plan participants.

B. Nature of the Suit

This is an action instituted by the Carpenters Southern California Administrative Corporation ("CSCAC"). CSCAC is the administrator of certain multi-employer benefit trust funds ("the Carpenters Trust Funds"). The Carpenters Trust Funds provide pension, health and welfare, vacation and apprenticeship benefits to covered carpentry employees and their families. The Funds are multi-employer benefit trust funds organized pursuant to the provisions of § 302(c)(5) and (6) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 186(c)(5)-(6).

The Carpenters Trust Funds are employee pension benefit plans or employee welfare benefit plans within the meaning of ERISA; *see* 29 U.S.C. §§ 1002(1) and 1002(2)(a). The Funds derive their revenues from contributions made by employers on behalf of covered carpentry employees, pursuant to the provisions of collective bargaining agreements executed by the employers and by unions affiliated with the United Brotherhood of Carpenters and Joiners of America (collectively the "Union"). Such collective bargaining agreements require that employers contribute a specified sum to each trust fund for each hour worked by covered employees.

CSCAC is a "fiduciary," as that term is defined in ERISA, 29 U.S.C. § 1002(21)(A). One of its duties as administrator of the Carpenters Trust Funds is to collect contributions from signatory employers who have failed to pay the required trust fund contributions. To ensure the continued ability of the Carpenters Trust Funds to provide benefits, CSCAC is obligated, by contract and by federal law, to use its best efforts to colect the delinquent contributions.

The present action was instituted in the Superior Court of the State of California for the County of Kern. The suit sought foreclosure of mechanics liens on property located in Kern County, which was owned and developed by respondent El

Capitan Development Company ("El Capitan"). The action was founded on the provisions of California Civil Code § 3111, which permits multi-employer trust funds to record and foreclose mechanics' liens to recover unpaid fringe benefit contributions owed to such trust funds on behalf of covered employees who perform work to improve the liened property.

Civil Code § 3111 provides:

> "For the purposes of this chapter, express trust funds established pursuant to a collective bargaining agreement to which payents are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective barganing agreement."

Under this statute, if the trust fund is not paid—i.e., if a contractor fails to make employee fringe benefit contributions for work performed on a construction project—the trust fund can record a mechanics' lien on the property and can foreclose the lien to compel payment of the debt. The mechanics' lien remedy is thus an effective menas of assuring that contractors fulfill their promise to pay fringe benefit contributions.

In the present case, CSCAC sought to recover delinquent contributions owed by a contractor whose employees performed work on a residential real estate development owned by El Capitan. The total sum claimed is $121,729.23, plus interest and costs. Though a default judgment was obtained against the contractor, efforts to directly collect contributions from the delinquent contractor failed. CSCAC therefore timely recorded mechanics' liens on the El Capitan property and sought foreclosure of the liens in the present action as a means of collecting the trust fund contributions.

C. Proceedings Below

El Capitan filed a demurrer to CSCAC's complaint, asserting that CSCAC's right to maintain the present action is preempted

by § 514(a) of ERISA, 29 U.S.C. § 1144(a), which provides, in pertinent part:

> "[T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan. . ."

The trial court sustained the demurrer of El Capitan; judgment was entered by the Kern County Superior Court on August 8, 1985 and a timely appeal was filed by CSCAC.

In reliance on the opinion in *Carpenters Health & Welfare Fund v. Parnas Corp.*, (1986) 176 Cal. App.3d 1196, the Court of Appeal reversed the trial court and held that Civil Code § 3111 was not preempted by ERISA (*El Capitan I*, Appendix B, *infra.*)

El Capitan filed a petition for review in the California Supreme Court, asserting that the decision of this Court in *Pilot Life Insurance Co. v. Dedeaux*, (1987) 481 U.S. 41, 107 S.Ct. 1549, compelled a ruling that § 3111 is preempted. The California Supreme Court remanded the case to the Court of Appeal for further consideration in light of *Pilot Life.* (Appendix C, *infra.*) On remand, the Court of Appeal reversed its earlier opinion and held that *Pilot Life* had "changed" the law, requiring preemption of § 3111 (*El Capitan II*, Appendix D).

CSCAC timely filed a petiton for review in the California Supreme Court, supported by briefs and letters from more than a dozen counsel for prospective *amici curiae.* On April 21, 1988, the California Supreme Court granted review. On June 20, 1991, the California Supreme Court issued its decision (*Carpenters Southern California Administrative Corporation v. El Capitan Development Company*, 53 Cal.3d 1041 ("*El Capitan III*") Appendix A, *infra.*) By a vote of 5-2, the California Supreme Court held that Civil Code § 3111 is preempted because it "relates to" ERISA regulated employee benefit plans "by creating an additional funding mechanism for ERISA plans not provided for by Congress. . ." 53 Cal.3d at 1051. The court relied heavily upon the recent decision of the U.S. Court of Appeals for the Fifth Circuit in *Ironworkers Pension Fund v. Terotechnology Corporation* (1990) 891 F.2d 548, *cert. denied,* (1991) ____ U.S. ____, 110

S.Ct. 3272, and rejected the reasoning in other recent appellate court opinions upholding the use of state collection remedies to enforce employers' collection obligations to multi-employer fringe benefit trust funds; *see, e.g., Plumber's Local 458 v. H. Immel, Inc.* (1989) 151 Wis. 2d 233, 445 N.W.2d 43; *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association* (1990) 221 Cal. App.3d Supp. 21; *Sasso v. Vachris* (1985) 484 N.E.2d 1359, 494 NYS 2d 856; *Carpenters Health & Welfare Trust Fund v. Parnas Corp.*, (1986) 176 Cal. App.3d 1196. The lengthy and vigorous dissent filed by two justices argued that the majority had ignored the standards for ERISA preemption set forth by this Court in *Mackey v. Lanier Collection Agency & Service* (1988) 486 U.S. 825, 108 S.Ct. 2182 and other cases and concluded that the majority had misapplied ERISA's preemption clause.

Because the present case squarely presents an issue on which there is a split of authority among lower appellate courts (and between the members of the California Supreme Court itself) CSCAC now petitions this court for a writ of certiorari.

V

REASONS THE WRIT SHOULD BE GRANTED

A. The Guidance of This Court is Needed to Resolve a Conflict Among Lower Appellate Courts.

For many years, state and federal appellate and trial courts have reached conflicting conclusions regarding the application of § 514(a) of ERISA to state collection remedies; *see e.g., Sasso v. Vachris* (1985) 484 N.E.2d 1359, 494 NYS 2d 856 [state collection remedies not preempted]; *Carpenters Health & Welfare Fund of Philadelphia v. Ambrose* (3d Cir. 1983) 727 F.2d 279 [same]; *Laborers Fringe Benefit Funds v. Northwest Concrete & Construction, Inc.* (6th Cir. 1981) 640 F.2d 1350, 1352 [state injunctive remedies available to enforce collection of trust fund contributions]; *Trustees for the Alaska Hotel & Restaurant Employees Health & Welfare Fund v. Hansen,* (Alaska 1984) 688 P.2d 587 [enactment of 1980 amendments to ERISA did not displace state collection remedies]; *Carpenters Health & Welfare*

Trust Fund v. Parnas Corporation (1986) 176 Cal. App.3d 1196 [state lien laws not preempted by ERISA] (disapproved in *El Capitan III*); *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association* (1990) 221 Cal. App.3d Supp. 21 [same holding] (also disapproved in *El Capitan III*); *Retirement Fund of the Fur Manufacturing Industry v. Getto & Getto, Inc.*, (S.D.N.Y. 1989) 714 F.Supp. 651, 670 [state collection remedies not preempted]; *Planned Consumer Marketing, Inc. v. Coats & Clark, Inc.*, (1988) 527 N.Y.S.2d 185, 190-191, 522 N.E.2d 3 [state corporate statute permitting judgment creditor to bring action against a director or officer for contribution violations relating to an ERISA trust not preempted by ERISA]; *McMahon v. McDowell*, (3d Cir. 1986), 794 F.2d 100 (state collection remedies preempted]; *Ironworkers Pension Fund v. Terotechnology* (5th Cir. 1990) 891 F.2d 548, *cert. denied* (1991), ___ U.S. ___, 110 S.Ct. 3272. [ERISA preempts state lien remedy for fringe benefit trusts]; *Edwards v. Bethlehem Steel Corp.* (Ind. App. 1990), 554 N.E. 2d 43 [same].[1]

The issue of preemption of state lien laws is of critical importance to employee benefit trusts in the construction industry, because such trusts depend heavily on the lien laws to enforce the contribution obligations of employers. The construction industry is a highly fragmented segment of the American economy; in California, thousands of small contractors compete to perform construction work. (*See*, John T. Dunlop, "The Industrial Relations System in Construction," in Weber (Ed.) *The Structure of Collective Bargaining* (New York; Free Press of Glencoe, 1961) pp. 255-277, and Daniel Q. Mills, "Industrial Relations and Manpower in Construction" (Cambridge; MIT Press, 1977) p.

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[1] In a just-published decision, a divided panel of the U.S. Court of Appeals for the Ninth Circuit has held that California Civil Code § 3111 is preempted by ERISA; *Sturgis v. Miller*, ___ F.2d ___ (U.S.C.A. No. 90-15054 (September 3, 1991)). The panel majority held the statute preempted because "Section 3111 contains a clear reference to and connection with ERISA." The dissent argued that Civil Code § 3111 is part of a comprehensive statutory scheme to protect California employees' entire wage and fringe benefit package and is beyond the preemptive reach of ERISA.

385. Small construction companies often go bankrupt, dissolve or simply "disappear."[2] One federal appellate court has taken specific note of a contractor which reportedly changed the name of its business eighteen times within a period of just nine months; *see NLRB v. Associated General Contractors of California, Inc.,* (9th Cir. 1980) 633 F.2d 766, 769. Absent the availability of a lien or other security device to compel payment, trust funds are often unable to collect delinquent benefit contributions. Elimination of the lien remedy may jeopardize the ability of the funds to provide pension and health and welfare benefits at current levels.

As the dissenters in the California Supreme Court argued: "To conclude that state lien laws are preempted when ERISA plans are involved means that millions, perhaps billions, of dollars . . . are jeopardized . . . To suggest that a Congress that adopted a comprehensive law to protect the interests of participants in employee benefit plans intended to preempt state lien laws strains credulity." 53 Cal.3d at 1064.

B. The California Supreme Court's Decision Ignores the Framework for Preemption Analysis Developed by This Court.

While acknowledging and citing many of the cases from this Court reviewing ERISA preemption issues, the California Supreme Court's opinion ignores the framework for preemption analysis set forth by this Court in *Fort Halifax Packing Co., Inc. v. Coyne* (1987) 482 U.S. 1, 107 S.Ct. 2211 and *Pilot Life Ins. Co. v. Dedeaux,* (1987) 481 U.S. 41 41-42, 107 S.Ct. 1549. Both *Fort Halifax* and *Pilot Life* emphasize the principle that, under ERISA, as in any preemption analysis, " 'The purpose of Congress is the ultimate touchstone' " (*Fort Halifax,* 482 U.S. 1, 19, 107 S.Ct. 2211, 2216; *citing Malone v. White Motor Corp.,* (1978) 435 U.S. 497, 504, 98 S.Ct. 1195, 1189 (1978).) In *Pilot Life,* this Court stated that "[i]n expounding a statute we [are]

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[2] The 1977 Census of Construction Industries found that there were more than 288,000 "specially trained contractors". On the average, each firm employed just six construction workers. *See,* U.S. Bureau of Census, Census of Construciton Industries (1977), cited in Statistical Abstract of the United States (1979) Table 1365, p. 776.

not . . . guided by a single sentence or member of a sentence, but look to the provisions of the whole law and to its object and policy." *Pilot Life, supra,* 481 U.S. 41, 51, 107 S.Ct. 1549, 1555. Ignoring these settled principles, the California Supreme Court's majority focused narrowly on two phrases in Section 514 of ERISA, 29 U.S.C. § 1144.

Section 514(a) states that ERISA supersedes "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . ." 29 U.S.C. § 1144(a). The California Supreme Court has held that Civil Code § 3111 is preempted because it "relates to" employee benefit plans "by creating a mechanism for enforcing an employer's contribution obligations that Congress did not provide." 53 Cal.3d at 1048.

The lower court reasoned that Civil Code § 1311 must be within the preemptive reach of § 514(a) because "a law 'relates to' an employee benefit plan in the normal sense of the phrase, if it has a connection with or reference to such a plan." (*El Capitan III*) 53 Cal.3d at 1048, citing *Pilot Life, supra,* 481 U.S. 41, 47, 107 S.Ct. 1849 (1987). But this Court has never stated that determination of whether a law "has a connection with or reference to" an ERISA-regulated plan is, by itself, dispositive of the preemption question. Indeed, this Court's decision in *Shaw v. Delta Airlines,* (1983) 463 U.S. 85, 100, n. 21, 103 S.Ct. 2890 recognizes that "[s]ome state actions may affect employee benefit plans in too tenuous, remote or peripheral a manner to warrant a finding that the law 'relates to' the plan". State collection remedies were clearly a "peripheral" concern of Congress at the time ERISA was enacted in 1974. Indeed, the subject of collection remedies is not addressed at all in the 1974 legislative history. The California Supreme Court does not suggest any possible reason why Congress would have wished to wipe out long-standing collection remedies created by state law.

Many laws which have "a connection with or reference to . . . a plan" have been held not to be preempted by ERISA; *see* e.g., *American Telephone and Telegraph Co. v. Merry,* (2d Cir. 1979) 592 F.2d 118, 121; *Carpenters Pension Trust v. Kronschnabel,* (9th Cir. 1980) 632 F.2d 745, *cert. denied* (1981) 453 U.S. 922, 101 S.Ct. 3159; *Stone v. Stone,* (9th Cir. 1980) 632 F.2d 740,

cert. denied (1981) 453 U.S. 922, 101 S.Ct. 3159. *See also, Retirement Trust Fund of the Plumbing, Etc. v. Franchise Tax Board*, (9th Cir. 1990) 909 F.2d 1266, 1280-1281 [tax levy procedure which permitted garnishment of benefits owed to participants under a plan not to be preempted by ERISA because the levy "only tenuously affects the vacation trust itself"]; *Franchise Tax Board v. Construction Laborers Vacation Trust*, (1988) 204 Cal. App.3d 955.

Admittedly, the scope of ERISA's preemption clause is broad; *see Pilot Life Insurance Co. v. Dedeaux* (1987) 481 U.S. 41, 16, 107 S.Ct. 1549, 1552. This Court has previously held that the preemption clause is as broad as its language suggests; *see Shaw v. Delta Air Lines*, 463 U.S. 85, 98-100 and nn. 18-20, 103 S.Ct. 2890, 2900-01 and nn. 18-20. But In each of this court's decisions in which a state law has been held preempted by ERISA, the law has trenched upon the regulatory scheme of ERISA in some meaningful way. *See Alessi v. Raybestos-Manhattan, Inc.* (1981) 451 U.S. 504, 523, 101 S.Ct. 1985 [state statute limiting plans' set-off rights preempted]; *Pilot Life Insurance Co. v. Dedeaux* (1987) 481 U.S. 41, 107 S.Ct. 1549 [state law claims relating to administration of plan preempted]; *Mackey v. Lanier Collections Agency and Service* (1988) 486 U.S. 825, 108 S.Ct. 2181 [state statute excluding ERISA plan benefits from garnishment preempted]; *FMC Corporation v. Holliday* (1990) 498 U.S. ____, 111 S.Ct. 403 [state statute denying subrogation rights to ERISA-regulated plans preempted]; *Ingersoll-Rand v. McClendon* (1990), 498 U.S. ____, 111 S.Ct. 478 [wrongful discharge action alleging termination to avoid benefit plan liability preempted].[3]

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[3] In *Shaw v. Delta Air Lines* (1983) 463 U.S. 85, 103 S.Ct. 2890, this court held certain provisions of the New York Human Rights Law to be preempted by ERISA but "only insofar as it prohibits practices that are lawful under federal law." 463 U.S. at 108, 103 S.Ct. at 2906. California Civil Code § 3111 does not purport to prohibit any practices which are lawful under federal law; nor does it restrict the operation of multi-employer trust funds in any way. Thus, under the *Shaw* test, the statute survives preemption.

In the present case, by contrast, use of the mechanic's lien remedy will have no appreciable effect on the ERISA regulatory scheme, while preemption of California Civil Code § 3111 will frustrate the state's purpose in protecting entire wage and fringe benefit package of workers. As this Court has stated: "We also must presume that Congress did not intend to preempt areas of traditional state regulation." *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 740, 105 S.Ct. 2380, 2389 citing *Jones v. Rath Packing Co.*, (1977) 430 U.S. 519, 525, 97 S.Ct. 1305, 1309. Cf. *Lingle v. Norge Division of Magic Chef, Inc.* (1988) 486 U.S. 399, 108 S.Ct. 1877.

The California Supreme Court further held that Civil Code Section 3111 falls within the terms of Section 514(c) of ERISA, 29 U.S.C. § 1144(c), which provides that ERISA's preemptive reach includes any law which "purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans."

According to the California Supreme Court, "Section 3111 regulates ERISA plans by creating a funding mechanism not provided by Congress." 53 Cal.3d at 1051.

The California Supreme Court's holding that the provision of an ancillary state collection remedy somehow "regulates" fringe benefit trust funds simply makes no sense. Permitting such funds to have lien rights to secure tha portion of a workers total compensation package which is paid as fringe benefits does not "regulate" such funds in any meaningful way. In finding that Civil Code § 3111 "regulates" employee benefit plans, the California Supreme Court stretches the natural meaning of the term beyond recognizable limits. *Black's Law Dictionary* (5th Ed., 1979) defines "regulates" as "to fix, establish or control; to adjust by rule, method or established mode; to direct by rule or restrictions; to subject to governing principles or laws. . . Regulate means to govern or direct according to rule or to bring under control of constituted authority and prohibit, to arrange in proper order, and to control that which already exists." Permitting employee benefit trusts to exercise a collection remedy does not "regulate" such trusts since it does not limit, direct, prescribe or control their conduct. Cf *FMC Corp. v. Holliday* (1990), 498 U.S. ____, 111 S.Ct. 403 [a state statute which *precludes* benefit plans from

exercising subrogation rights relates to and regulates such plan]. Not only does it not regulate the "terms and conditions" of employee benefit plans; it does not direct, limit or control their operation in any significant way. Like other portions of California's mechanics' lien law, it *does* regulate land rights, by making landowners potentially liable for the full value of labor contributed to works of improvement on their property.

This Court's holding in *Fort Halifax Packing Co., Inc. v. Coyne*, (1987) 482 U.S. 1, 107 S.Ct. 2211 contains a thorough and detailed analysis of the purpose of the preemption clause of § 514(a) of ERISA. This Court held that the preemption clause was designed "to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." 482 U.S. at 9, 107 S.Ct. at 2216. Summarizing its analysis, this Court stated: "It is thus clear that ERISA's preemption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities. A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them. Preemption ensures that the administrative practices of a single plan will be governed only by a single set of regulations." 482 U.S. at 11, 107 S.Ct. at 2217.[4]

The issue in *Fort Halifax* was whether a Maine statute requiring employers to provide a one-time severance payment to employees in the event of a plant closing was preempted by ERISA. The Court held that the statute was not preempted by ERISA because it did not create any "potential for the type of conflicting regulation of benefit plans that ERISA preemption was intended to prevent." 482 U.S. at 14, 107 S.Ct. at 2219.

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[4] In a subsequent decision, this Court stated that "in enacting ERISA, Congress' primary concern was with the mismanagement of funds accumulated to finance employee benefits and the failure to pay employee benefits from accumulated funds." *Massachusetts v. Morash* (1989), 490 U.S. 107, 109 S.Ct. 1668.

This Court's holding in *Fort Halifax* compels the conclusion that California Civil Code § 3111 is not preempted by ERISA. Civil Code § 3111 has no impact whatsoever on the processing of benefit claims and the disbursement of benefits. Its whole focus is *external* to the benefit administration process. Nor is there anything inconsistent in the holding of *Pilot Life* and *Fort Halifax*; both cases focus on the issue of whether state regulation intrudes on the process of providing employee benefits and administering employee benefit claims.[5]

Fort Halifax further holds that where a state statute does *not* implicate the concerns of ERISA's preemption provision—that is, the statute does not address the plans' internal administrative functions—there is no preemption:

> "If a state law creates no prospect of conflict with a federal statute, there is no warrant for disabling it from attempting to address uniquely local social and economic problems." 482 U.S. at 19, 107 S.Ct. at 2221.

California has recognized the frequent problems that workers, subcontractors and materialmen encounter in securing payment for their services on construction projects. (See Part E, *infra.*) The California mechanics' lien statutes provide a comprehensive framework for ensuring that all such parties get paid for labor and materials contributed to works of improvement on real property. *See, generally, Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803. Neither the California Supreme Court nor El Capitan has cited any language in the text of ERISA or in its legislative history to indicate that Congress intended to upset the carefully integrated California statutory scheme for protecting the

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[5] In *Pilot Life, supra,* 481 U.S. at 51-52, 107 S.Ct. at 1555, this Court held a state cause of action preempted "because, in this case, the state cause of action seeks remedies for the *improper processing of a claim for benefits* under an ERISA-regulated plan. . ." [Emphasis supplied]

wages and fringe benefits of workers employed on construction projects in California. [6]

Many courts have emphasized that, outside the benefit administration context, employee benefits trusts should be treated the same as other business entities. For example, in *Duffy v. King Cavalier,* (1989) 218 Cal.App.3d 1517, the court held that an employee benefit trust should have the same rights as any other investor to secure redress for stockbroker fraud. Similarly, in *Lane v. Goren,* (9th Cir. 1083) 743 F.2d 1340, the court held that employee benefit trusts that act as employers cannot assert the shield of Section 514(a) of ERISA to exempt themselves from the application of fair employment laws. *See also, Franchise Tax Board v. Construction Laborers Vacation Trust,* (1988) 204 Cal. App.3d 955. The California Supreme Court has suggested no reason why employee benefit trust funds should not have the same rights as other creditors entitled to utilize the lien remedy.

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[6]As the dissent noted in *Sturgis v. Miller,* ____ F.2d ____ (9th Cir. No. 90-15054. September 3, 1991):

> "California creates mechanic's liens in favor of 'mechanic's, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . ' Cal. Civil Code 3110. Section 3111 provides the same lien to employee benefit trust funds for unpaid employer contributions. California thus does not single out ERISA plans for special treatment, but gives ERISA plans the same procedure to recover unpaid employer contributions as California gives to employees who are not members of ERISA plans. Employee benefits (which may include pension, health, welfare, and vacation benefits) are an important part of an employee's compensation. The result of the majority's opinion is that employees who are not members of an ERISA plan may use mechanic's liens to ensure that employers fulfill their obligations to pay benefits—but members of ERISA plans may not. This turns the logic of *Mackey* on its head. *Mackey* precludes state laws that single out ERISA plans; it does not prohibit evenhanded state law enforcement procedures."

Because the California Supreme Court has applied ERISA's preemption clause without reference to the purpose of the clause, and the purpose of ERISA itself, this court should grant certiorari and reverse.

C. The Court Should Grant Certiorari to Clarify the Scope of the Holding in Pilot Life Insurance Co. v. Dedeaux.

A central issue in this case, and other cases considering the issue of ERISA preemption of state collection remedies, is the applicability of this Court's holding in *Pilot Life Insurance Co. v. Dedeaux* (1987) 481 U.S. 41, 107 S.Ct. 1549. In *Pilot Life*, this Court held that the remedies provided by § 502 of ERISA to claimants seeking employee benefits from ERISA-regulated benefit plans preempted all parallel state laws. This Court held that "The detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme . . . The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress had rejected in ERISA."

Pilot Life focuses on provisions of ERISA which have been in the statute since its inception. *Pilot Life* contains no discussion of the collection remedies which were added to ERISA in 1980, nor does it suggest that any collection remedy whatsoever was provided by ERISA prior to 1980. The "carefully integrated statutory scheme" described in *Pilot Life* did not, prior to 1980, contain any remedy which could possibly displace existing state law collection remedies.

Petitioner respectfully submits that the California Supreme Court has read *Pilot Life* far too broadly.[7] While all parties agree

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[7] This Court succinctly stated the limits of its holding in *Pilot Life* in its decision in *Metropolitan Life Insurance Co. v. Taylor*, (1987) 481 U.S. 58, 107 S.Ct. 1542 issued the same day: "In *Pilot Life Insurance Co. v. Dedeaux, ante* [citation] the Court held that state common law causes of action *asserting improper processing of a claim for benefits* under an employee benefit plan regulated by the Employer Retirement Income Security Act (ERISA) 88 Stat. 829, 29 U.S.C. § 1001, et seq., are preempted by the Act."

that the reach of federal preemption under § 514(a) of ERISA is wide, there is no hint in the legislative history or in any of the terms of the statute that Congress believed it was canceling literally dozens of state collection statutes across the country at a single stroke. Indeed, the legislative history of the 1980 amendments to ERISA compels the opposite conclusion. During hearings on the Multi-employer Pension Plan Amendments Act of 1980, which added §§ 512(g) and 515 to ERISA, 29 U.S.C. §§ 1132(g) and 1145, the validity of post-ERISA state collection remedies was recognized. House Report No. 96-869(II) on H.R. 3609 of the House Committee on Ways and Means, 96th Cong., 2d Sess., contains the following commentary on the new collection provisions:

> "The Committee's amendment provides that in the case of a civil action by any person to collect delinquent multi-employer plan contributions, *regardless of otherwise applicable law*, the court before which the action is brought may award the plaintiff (1) reasonable attorneys' fees, (2) court costs and (3) liquidated damages not to exceed twenty percent of the amount of delinquent contributions as determined by the court. However, these items are to be awarded to a plaintiff only to the extent that the multi-employer plan in question provided for such an award. The bill preempts any state or other law which would *prevent* the award of reasonable attorneys' fees, court costs or liquidated damages or which would limit liquidated damages to an amount below the twenty percent level. However, the bill does *not* preclude the award of liquidated damages in excess of the twenty percent level if an award of such a higher level of liquidated damages is permitted under state or other law. *The Committee amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multi-employer contributions.*" [Emphasis supplied]

This legislative history demonstrates that Congress did not intend to strip multi-employer trust funds of their existing collection remedies under state law. Instead, the intent was to provide powerful new weapons, in the form of potential awards of attorneys' fees, interest and liquidated damages, to discourage employ-

ers from engaging in protracted and expensive litigation over simple collection claims.[8]

As the U.S. Court of Appeals for the Sixth Circuit noted in *Laborers Fringe Benefit Funds v. Northwest Concrete & Construction, Inc.*, (1981) 640 F.2d 1350, 1352:

> "The legislative history underlying Section 502 indicates that Congress intended that the enforcement provisons should have teeth: the provisions should be liberally construed 'to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act.' H. Rep. No.93-533, 93d Cong. & Ad. News p. 4639, 4655. This history further states that *'the intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts* and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibility under state law for recovery of benefits due to participants.' " [Emphasis supplied.]

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[8] In *Sasso v. Vachris*, (1985) 494 NYS 2d 856, 489 N.E. 2d 1359 the New York State Court of Appeals rejected the argument that the collection remedies added to ERISA in 1980 dispiaced state law, reasoning as follows:

> "Nor do the 1980 amendments to ERISA indicate an intent on the part of Congress to preempt state remedies such as § 630 [of the New York Business Corporation Law]. They merely added a statutory obligation upon employers to make contributions to multiemployer plans as required by the terms of the employee benefit plan or the collective bargaining agreement [citation omitted] and provided a civil cause of action in favor of fiduciaries to enforce this obligation [citation omitted]. Contrary to the positon taken by defendants, the relevant legislative history of these amendments evince a specific congressional intent that ERISA's civil remedies merely supplement, rather that supersede, existing state remedies such as Business Corporation Law § 630, at least insofar as they provide for the collection of delinquent employer contributions to employee benefit plans."

D. Preemption of State Lien Laws Leaves an Unexplained "Gap" in the Collection Remedies Available to Multi-Employer Benefit Trust Funds.

In support of its conclusion that ERISA preempts state collection remedies, the California Supreme Court notes that § 515 of ERISA, 29 U.S.C. § 1145, permits employee benefit plans to bring collection actions against delinquent employers. The court reasoned that the presence of this collection remedy within ERISA supports the inference that state lien remedies are preempted. *El Capitan III,* 53 Cal.3d at 1052. The difficulty with this reasoning is that § 515 was not added to ERISA until 1980, though ERISA's preemption clause was part of the original statute enacted in 1974. The amendment of ERISA in 1980 to include a collection remedy simply cannot support the inference that the preemption clause was intended to wipe out state collection remedies. If this were so, there would be a six year "gap" during which employee benefit trust funds had neither remedies under ERISA nor remedies under state lien laws.

The California Supreme Court avoids this anomaly by asserting that § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), which was part of ERISA as initially enacted, created a collection remedy. *El Capitan III,* 53 Cal.3d at 1052. But numerous federal courts have held that no remedy for collection of delinquent employer contributions was provided by ERISA prior to the addition of § 515 in 1980.

For example, in *Carl Allen v. McWilliams Electric Co.,* (D. Mo. 1980) 494 F. Supp. 53, a federal district court refused to permit employee benefit trusts to sue an allegedly delinquent employer under § 502 of ERISA, stating "This suit for contributions of money allegedly due and owing qualifies only for the future equitable relief prayed for . . . not for a money award for past violations." 494 F. Supp. at 56. The same conclusion was reached by another federal trial court in *American Benefit Plan Administrators v. Foley,* 2 EBC 1897 (CD Cal. 1981) where the court stated "Prior to 1980, § 502(g) of ERISA (29 U.S.C. § 1132(g)) provided only for equitable relief and any action for unpaid plan contributions could, therefore, only be brought under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185."

State courts reached the same conclusion. For example, in *Vermeer v. Tomken Construction*, (1980) 49 Or App. 37, the Court of Appeals held that the pre-1980 version of § 502(a) of ERISA did not provide a cause of action to recover delinquent trust fund contributions. The court stated: "ERISA provides no remedy for trustees seeking to recover delinquent contributions to a trust fund . . . therefore, though plaintiff's action is one to enforce the terms of its agreement with defendant, it is not an action under 29 U.S.C. § 1132(a)(3)(B)(ii) requiring exclusive federal jurisdiction . . ." These cases belie the California Supreme Court's assertion that § 515 of ERISA was added to the statute only to "streamline" an already-existing collection remedy. There simply was no ERISA collection remedy prior to 1980.

Once it is established that ERISA did not, as originally enacted, contain a remedy to compel payment of delinquent employer trust fund contributions, the illogic of the California Supreme Court's decision is plain. If, as the California Supreme Court held, § 514(a) of ERISA was intended to prempt all non-federal collection remedies, why did ERISA, as originally enacted, contain no substitute remedy, and why does the 1974 legislative history contain no reference to collection issues? The obvious answer is that Congress did not intend that ERISA's preemption clause would apply to such remedies.

The reasoning of this Court in *Mackey v. Lanier Collection Agency* (1988) 486 U.S. 825, 108 S.Ct. 2182 is particularly instructive in this regard. In *Mackey*, this Court concluded that Georgia's general garnishment statute was not preempted by ERISA because (1) ERISA provides no means for execution of judgments against employee benefit plans and (2) the federal scheme for enforcement of judgments evidenced by FRCP 69(a) contemplates the use of state procedures to enforce judgments. Applying the same reasoning as in *Mackey* to this case, it can be seen that (1) prior to 1980, ERISA provided no collection remedy and (2) the only federal collection remedy then available, under § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a) did not purport to preempt ancillary state collection remedies. In fact, federal courts have explicitly recognized that § 301 does not displace state lien laws; see *CSCAC v.*

Majestic Housing, (9th Cir. 1984), 743 F.2d 1341; *CSCAC v. D&L Camp Construction*, (9th Cir. 1984), 738 F.2d 999.

E. Preemption of California Civil Code Section 3111 Disrupts the California Statutory Scheme for Protecting the Wages and Benefits of Workmen.

The statute at issue in this case is not an isolated piece of legislative handiwork. It is part of an integrated network of California laws designed to ensure that construction workmen receive their full wages for labor contributed for works of improvement on California real property.

The mechanics' lien remedy was spawned by the California Constitution itself. The Constitution of 1879 required the Legislature to grant laborers and materialmen a lien upon property which they had improved. (*See* California Constitution Article XIV, Section 3; *Martin v. Becker* (1915) 169 Cal. 301, 316.) As the California Supreme Court has noted, "This state, from the earliest days, and consistently thereafter, has asserted its interest in protecting the claims of laborers and material men." *Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803, 826.

California Code of Civil Procedure § 1182, the predecessor to California Civil Code § 3111, was amended in 1965 to eliminate an ambiguity in the lien law. Though laborers were clearly entitled to record and foreclose mechanics' liens to protect their claims to direct wages, an issue had arisen as to whether they could assert lien rights with regard to fringe benefit payments made, in the first instance, to third parties. Since the intent of the lien law was to protect the workers' entire wage package, the law was amended to grant lien rights to protect the workers' fringe benefits. Assemblyman James R. Mills, Chairman of the State Assembly Committee on Rules, stated the purpose of the legislation as follows:

> "This bill provided that those trust funds established in accordance with collective bargaining agreements between labor and management, and to which management payments are made to provide fringe benefits to the wage agreement, shall be entitled to a lien on particular real property in the amount of the supplemental fringe benefit payments owing to

> it . . . These contributions are sometimes deducted from the wage checks of the workers, and, in all cases, *they are part of the total wage package of the worker* . . . The ambiguousness of the present law prohibits the trust funds from asserting the worker's lien rights. Although they have a sole fiduciary obligation to collect the money, this ambiguousness has resulted in loss of monies of substantial amounts to the workers and to the trust funds. This bill would permit a limited clarification to permit lawful trust funds the right to assert the workers' lien rights as they already exist, and would not expand or enlarge the rights which the worker now has." [Emphasis supplied][9]

The interest of the State of California in providing a comprehensive remedy to protect the wage package, including fringe benefits, of workers who perform construction services would be gravely eroded if Civil Code § 3111 is nullified by the preemptive force of federal law. The importance of the statute is equivalent to the state law provisions considered in *Stone v. Stone*, (9th Cir. 1980) 632 F.2d 740, *cert. denied* (1981) 453 U.S. 922, 101 S.Ct. 3159. In *Stone*, a federal appellate court affirmed a trial court decision which held that ERISA did not preempt California state courts from ordering an ERISA-regulated pension plan to pay a portion of a plan participant's pension benefits directly to his or her ex-spouse. The lower court cited the state's critical interest in

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[9] The California Supreme Court holds that the mechanic's lien remedy is preempted because it creates new substantive rights against parties not involved in the employer-trust fund relationship. As the dissent notes, however, "The lien does not create personal liability of the owner. It has long been recognized that the lien of the mechanic, artisan and supplier is equitable because those parties have created the very property upon which the lien attaches. Cf *Tuttle v. Montford* (1857) 7 Cal. 358, 360, *Connolly Development, Inc. v. Superior Court*, (1976) 17 Cal.3d 803, 825-827. Obviously, return of the materials or labor to the unpaid supplier or laborer is not a viable option, and the law's recognition of the unpaid suppliers' and laborers' contribution to the improvement does not create a debt or personal liability on the part of the owner, but only an interest in the property they helped create." *El Capitan III* 53 Ca.3d at 1065 (Broussard, J., dissenting).

regulating the sensitive area of family law, stating that "both Congress and the courts recognize that the whole subject of domestic relations of husband and wife, and parent and child, belongs to the laws of the states and not to the laws of the United States." *See also, American Telephone and Telegraph Co. v. Merry,* (2d Cir. 1979) 592 F.2d 118, 121; *Carpenters Pension Trust v. Kronschnabel,* (9th Cir. 1980) 632 F.2d 745, *cert. denied* (1981) 453 U.S. 922, 101 S.Ct. 3159.

Preemption of California Civil Code § 3111 would create an anomaly in California law. Those workers whose payments for fringe benefit contributions are deducted from their cash wages would have a lien right for the full amount of their compensation.[10] By contrast, those workers who receive fringe benefits from employee benefit plans to which their employers directly contribute would be deprived of lien rights for a substantial portion of their total compensation package. (For many workers, the fringe benefit payments now constitute as much as thirty-five percent of their total compensation.)

This Court has long recognized that fringe benefits are an integral part of the workman's total compensation. In *United States v. Carter* (1956) 353 U.S. 210 77. S.Ct. 793, this court held that a surety to fringe benefits funds on a payment bond furnished by a contractor pursuant to the Miller Act (40 U.S.C. § 269a *et seq.*) was subject to suit by fringe benefit funds seeking to recover delinquent employer contributions. This Court reasoned in part that the "contributions were a part of the compensa-

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[10] The California Supreme Court asserts that employee benefit plans are different from the other entities entitled to assert mechanic's lien rights, because the other entities directly perform labor and provide material for construction projects, which the plans do not. 53 Cal.3d at 1049. While this may be true, it is scarcely a basis for invalidating the lien rights of the benefit plans. The benefit plans act as a repository and funding source for benefits provided to workmen who *do* contribute to works of improvement on real property. Permitting the workmen to pursue lien claims for the cash portion of their wages, while denying lien protection for the portion of their wages paid into employee benefit plans eviscerates the California Legislature's intent to protect the *entire* wage package of the workman.

tion for the work to be done by [the] employees" and that trustees "stand in the shoes of the employees and are entitled to enforce their rights." 353 U.S. at 217-218, 220. *See, also, Morrison-Knudsen Construction Co. v. OWCP* (1982) 461 U.S. 624, 631, 102 S.Ct. 2045.

It is simply incomprehensible that Congress intended that workmen who derive fringe benefits from ERISA-regulated employee benefits plans would become second class citizens, without the full protection of lien rights enjoyed by their coworkers.[11] Yet that is the result of the California Supreme Court's reasoning in the *El Capitan* case.

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[11] As the dissent below noted: "ERISA plans and others who have unpaid claims based on construction projects are usually unpaid because there are not enough funds to go around. To permit architects, engineers, surveyors, mechanics, laborers and others enumerated in Civil Code § 3110 to obtain liens while denying liens to ERISA plans is to make ERISA plans second-class creditors. The effect of the preference will ordinarily mean that Section 3110 creditors will have a preference and will receive all or part of their claims while ERISA plans will have none. Making the plans second-class creditors flies in the face of ERISA's express policy to protect the interest of participants of the plan (29 U.S.C. § 1001(b), (c)) and, more particularly, ERISA's express policy "to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multi-employer pension plans" and "to provide a financially self-sufficient program for the guarantee of employer benefits under multi-employer plans." (29 U.S.C. § 1001a(c)(3), (4).)" 53 Cal.3d at 1062.

VI

CONCLUSION

For the reasons set forth herein, petitioner prays that the writ of certiorari be granted.

DATED: September 16, 1991

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Appendix A

[No. S000772. June 20, 1991.]

Carpenters Southern California Administrative Corporation, Plaintiff and Appellant,

v.

El Capitan Development Company, Defendant and Respondent.

Counsel

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Littler, Mendelson, Fastiff & Tichy, Karen E. Ford, Major Williams, Jr., Dorothy J. Stephens and Gregory R. Meyer for Defendant and Respondent.

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Opinion

PANELLI, J.—The issue presented is whether Civil Code section 3111,[1] which creates liens on real property in favor of trust

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[1] Civil Code section 3111 provides: "For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of

funds established pursuant to collective bargaining agreements, is preempted by the Employee Retirement Income Security Act of 1974 (ERISA). (29 U.S.C. § 1001 et seq.) We conclude that ERISA does preempt section 3111.

Facts

Carpenters Southern California Administrative Corporation (CSCAC) is the administrator and the assignee of rights of various multiemployer trust funds established under collective bargaining agreements, including the Carpenters' Trust Funds. The Carpenters' Trust Funds are employee pension benefit plans or employee welfare benefit plans within the meaning of ERISA. (See 29 U.S.C. § 1002(1), (2)(A), & (21)(A).) CSCAC is a "fiduciary" as defined in ERISA. (29 U.S.C. § 1002(21)(A).)

Collective bargaining agreements often require employers to make contributions to trust funds for the benefit of covered employees. In the present case, the covered employees are members of unions affiliated with the United Brotherhood of Carpenters and Joiners of America (Unions). CSCAC, due to its fiduciary relationship with the Unions and in its role as administrator of the trust, has a duty to collect contributions from employers who fail to make the required payments to the trust.

El Capitan Development Company (El Capitan) developed a condominium project on its property in Bakersfield. The general contractor was Grupe Construction (Grupe). Grupe subcontracted with Pacific Southwest Framing for part of the framing work. In its complaint, CSCAC alleges that John Hall Enterprises (John Hall), with whom CSCAC made a collective bargaining agreement, and Pacific Southwest Framing are a single entity. John Hall failed to make fringe benefit contributions to the trust funds in excess of $121,000.

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fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement."

All further statutory references are to the Civil Code unless otherwise indicated.

Pursuant to section 3111, CSCAC recorded trust fund liens against El Capitan's real property in order to collect the delinquent contributions to the trust funds. CSCAC later sued El Capitan in Kern County Superior Court to foreclose the liens. CSCAC alleged that, because John Hall and Pacific Southwest Framing are a single entity, Pacific Southwest Framing was bound by CSCAC's agreement with John Hall and was therefore obligated to make the contributions to the trust.[2] CSCAC further alleged that because the unpaid contributions were due on account of work performed on El Capitan's property, section 3111 created liens on that property.

El Capitan, which has not signed a collective bargaining agreement with CSCAC, demurred to CSCAC's complaint, arguing that ERISA preempted section 3111. (See 29 U.S.C. § 1144.) The trial court granted El Capitan's demurrer with leave to amend. When CSCAC declined to amend, the court entered a judgment of dismissal.

The Court of Appeal reversed the judgment. We granted El Capitan's petition for review and retransferred the matter to the Court of Appeal for reconsideration in light of *Pilot Life Ins. Co. v. Dedeaux* (1987) 481 U.S. 41 [95 L.Ed.2d 39, 107 S.Ct. 1549] (hereafter *Pilot Life*). On remand, the Court of Appeal concluded that ERISA preempted section 3111 and affirmed the judgment of dismissal. We affirm.

Discussion

Introduction

(1a) Section 3111 creates liens on real property in favor of trust funds established pursuant to collective bargaining agreements in amounts equal to the fringe benefit contributions which are due under those collective bargaining agreements. Under section 3111, if an employer fails to make contributions, the trust fund can record a lien on the property where the work was performed and foreclose the lien to compel payment of the debt.

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[2] Pacific Southwest Framing has not signed a collective bargaining agreement with CSCAC.

(2a) ERISA is a comprehensive federal statutory scheme designed to promote the interests of employees and their beneficiaries in employee benefit plans. (*Shaw v. Delta Airlines, Inc.* (1983) 463 U.S. 85, 90 [77 L.Ed.2d 490, 497, 103 S.Ct. 2890].) "[ERISA] imposes participation, funding, and vesting requirements on pension plans.... As part of this closely integrated regulatory system Congress included various safeguards to preclude abuse and 'to completely secure the rights and expectations brought into being by this landmark reform legislation.' S. Rep. No. 93-127, p.36 (1973). Prominent among these safeguards [is] ... § 514(a), 29 U.S.C. § 1144, ERISA'S broad pre-emption provision...." (*Ingersoll-Rand Co. v. McClendon* (1990) 498 U.S. ____, ____ [112 L.Ed.2d 474, 482-483, 111 S.Ct. 478, 482] (hereafter *Ingersoll-Rand*).)

(1b) We must decide whether ERISA's broad preemption provision encompasses section 3111. We conclude that it does. (2b) " '[T]he question whether a certain state action is preempted by federal law is one of congressional intent. "The purpose of Congress is the ultimate touchstone." ' [Citations.] To discern Congress' intent we examine the explicit statutory language and the structure and purpose of the statute. [Citations.] ... [¶] Where, as here, Congress has expressly included a broadly worded pre-emption provision in a comprehensive statute such as ERISA, our task of discerning Congressional intent is considerably simplified." (*Ingersoll-Rand, supra,* 498 U.S. at p. __ [112 L.Ed.2d at p. 483, 111 S.Ct. at p. 482].)

Section 514(a) of ERISA expressly preempts "any and all state laws insofar as they may now or hereafter *relate* to any employee benefit plan...." (29 U.S.C. § 1144(a), italics added.) Section 514(c) of ERISA defines the terms used in section 514(a): "(1) The term 'State Law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.... [¶] (2) The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." (29 U.S.C. § 1144(c).)

CSCAC argues that ERISA preempts only those state laws that regulate the terms and conditions of ERISA plans. This argument derives from the phrase "purports to regulate," which appears in the definition of "State" in section 514(c)(2) of ERISA. (29 U.S.C. § 1144(c)(2).) The case law, however, does not support CSCAC's argument. All that is necessary to invoke ERISA's statutory preemption provision is that the state law in question "relate to" an ERISA plan. As will be shown, section 3111 "relates to" such plans by creating a mechanism for enforcing an employer's contribution obligations that Congress did not provide.

Furthermore, even if we were to accept for the sake of argument CSCAC's proposition that a state law, to be preempted, must regulate an ERISA plan, section 3111 still would be preempted. Although section 3111 does not specifically require that certain terms be included in a plan, it does purport to regulate the conditions under which the terms of a plan can be enforced. The section does so by creating an additional cause of action for enforcing contribution obligations and by making an additional entity liable for such contributions. (See *Iron Workers Pension Fund v. Terotechnology* (5th Cir. 1990) 891 F.2d 548, 553 (hereafter *Iron Workers*).)

The Breadth of Federal Preemption Under ERISA

(2c) The United States Supreme Court in a series of opinions has emphasized the unusual breadth of ERISA's express preemption provision, describing section 514(a) of ERISA as a "virtually unique pre-emption provision" (*Franchise Tax Bd. v. Laborers Vacation Trust* (1988) 463 U.S. 1, 24, fn. 26 [77 L.Ed.2d 420, 440, 103 S.Ct. 2841]), and as a clause "conspicuous for its breadth." (*FMC Corp. v. Holliday* (1990) 498 U.S. ____, ____ [112 L.Ed.2d 356, 364, 111 S.Ct. 403, 407].) The court has also characterized the provision as "deliberately expansive" (*Pilot Life, supra*, 481 U.S. at p. 46 [95 L.Ed.2d at p. 46], citing *Alessi v. Raybestos-Manhattan, Inc.* (1981) 451 U.S. 504, 523 [68 L.Ed.2d 402, 416, 101 S.Ct. 1895]), and as "establish[ing] as an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA."

(*FMC Corp. v. Holliday, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 364, 111 S.Ct. at p.407].)

(3) Consistent with the foregoing, the high court has also interpreted broadly the statutory term "relate to." (29 U.S.C. § 1144(a).) Most recently, in *Ingersoll-Rand, supra*, the court explained that "[t]he key to § 514(a) is found in the words 'relate to.' Congress used those words in their broad sense, rejecting more limited pre-emption language that would have made the clause 'applicable only to state laws relating to the specific subjects covered by ERISA.' " (*Ingersoll-Rand, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 483, 111 S.Ct. at p. 482], citations omitted.) This is consistent with the court's previous instruction in *Pilot Life* that " 'a state law "relate[s] to" a benefit plan, "in the normal sense of the phrase, if it has a connection with or reference to such a plan." ' " (*Pilot Life, supra*, 481 U.S. at p. 47 [95 L.Ed.2d at p. 48], citations omitted.) "Because of the breadth of the preemption clause and the broad remedial purpose of ERISA, 'state laws found to be beyond the scope of [section 514(a) of ERISA] are few.' "(*Cefalu v. B. F. Goodrich Co.* (5th Cir. 1989) 871 F.2d 1290, 1294, fn. omitted.)

In determining whether section 3111 "relates to" a benefit plan, we take note that the United States Supreme Court has on several occasions stated that "state laws which make 'reference to' ERISA plans are laws that 'relate to' those plans within the meaning of § 514(a) [of ERISA]." (*Mackey v. Lanier Collection Agency & Serv.* (1988) 486 U.S. 825, 829 [100 L.Ed.2d 836, 843, 108 S.Ct. 2182], citing *Pilot Life, supra*, 481 U.S. at pp.47-48 [95 L.Ed.2d at pp. 47-48]; *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 739 [85 L.Ed.2d 728, 740, 105 S.Ct. 2380].) Indeed, the court has "virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted under § 514(a)." (*Mackey v. Lanier Collection Agency & Serv., supra*, 486 U.S. at p. 829 [100 L.Ed.2d at p. 844].)

Section 3111 Is Specifically Designed to Affect Employee Benefit Plans

(1c) Section 3111 is specifically designed to affect employee benefit plans. The section expressly refers to "trust fund[s] established pursuant to a collective bargaining agreement" and provides to such funds a mechanics' lien remedy not provided by Congress. Thus, section 3111 singles out ERISA plans for special treatment.

CSCAC argues that "ERISA trust funds receive no greater benefits under [section 3111] than any other party entitled to invoke the mechanics' lien remedy." To be sure, section 3111 does treat ERISA plans the same as other parties whose claims are based on having furnished labor or materials for a construction project. The significant difference, however, is that ERISA plans do not furnish labor or materials for construction projects. Accordingly, to treat them as persons who do furnish labor or materials is to single them out for special treatment.[3] Because section 3111 singles out ERISA plans for special treatment and is, in fact, designed to affect them specifically, we conclude the statute "relates to" ERISA plans.[4]

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[3] Another significant difference between ERISA plans and other persons whose claims are based on furnishing labor or materials is that the latter assert their claims under section 3110. Section 3111 is specifically for the use of express trust funds established pursuant to collective bargaining agreements.

[4] CSCAC contends that because section 514(a) of ERISA refers to "plans" and section 3111 refers to "trust funds," section 3111 is not preempted by ERISA. However, other statements and arguments made by CSCAC belie the contention that section 3111 does not affect ERISA *plans*. For example, CSCAC states that the "Carpenters Trust Funds are employee pension benefit plan or employee welfare benefit *plans* within the meaning of ERISA; see 29 U.S.C. §§ 1002(1) and 1002(2)(a)." (Italics added.) Also, CSCAC argues that the mechanics' lien action codified in section 3111 provides an effective and necessary remedy for employee benefit *plans* to enforce an employer's promise to pay fringe benefit contributions and that preemption of section 3111 may affect the *plans*' ability to maintain benefit levels for their participants.

Preemption Does Not Require Regulation of the Terms and Conditions of an ERISA Plan

(4) Contrary to CSCAC's argument, it is well settled that a state law need not regulate the terms and conditions of an ERISA plan for preemption to apply. The United States Supreme Court has rejected the similar argument that the statutory term "purports to regulate" in section 514(c)(2) of ERISA causes section 514(a) of ERISA to preempt only those state laws that affect a plan's terms, conditions, or administration. (*Ingersoll-Rand, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 485, 111 S.Ct. at p. 484].) In rejecting this argument, the court stated that, "[the argument] misreads § 514(c)(2) [of ERISA] and consequently misapprehends its purpose.... Section 514(c)(2) expands, rather than restricts, [the] definition [of State] for pre-emption purposes in order to '*include*' state agencies and instrumentalities whose actions might not otherwise be considered state law. Had Congress intended to restrict ERISA's pre-emptive effect to state laws purporting to regulate plan terms and conditions, it surely would not have done so by placing the restriction in an adjunct definition section while using the broad phrase 'relate to' in the pre-emption section itself. Moreover, if § 514(a) [of ERISA] were construed as [defendant] urges, the 'relate to' language would be superfluous—Congress need only have said that 'all' state laws would be pre-empted. Moreover, our precedents foreclose this argument. In *Mackey*, the Court held that ERISA preempted a Georgia garnishment statute that *excluded* from garnishment ERISA plan benefits. [*Mackey v. Lanier Collections Agency & Serv., supra*, 486 U.S. at pp. 828, fn. 2, 830 (100 L.Ed.2d at pp. 843, 844).] Such a law clearly did not regulate the terms or conditions of ERISA-covered plans, and yet we found preemption. *Mackey* demonstrates that § 514(a) cannot be read so restrictively." (*Ingersoll-Rand, supra*, 498 U.S. at p. ____ [112 L.Ed.2d at p. 485, 111 S.Ct. at p. 484].)[5]

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[5] The Court of appeal originally decided this case by relying on *Carpenters Health & Welfare Trust Fund v. Parnas Corp.* (1986) 176 Cal.App.3d 1196 [222 Cal.Rptr. 668]. the *Parnas* case was decided before, and is inconsistent with, *Pilot Life*. Rather than using the "relate to" test, the *Parnas* decision used the much narrower preemption

Section 3111 Also Regulates ERISA Plans

(1d) Even though a state law need not regulate ERISA plans to be preempted, a finding that a state law does regulate ERISA plans necessarily includes a finding that the law "relates to" such a plan. (*Local Union 598 Etc. v. J.A. Jones Const. Co.* (9th Cir. 1988) 846 F.2d 1213, 1218, affd. (1988) 488 U.S. 881 [102 L.Ed.2d 202, 109 S.Ct. 210] (hereafter *Jones*).)[6] Section 3111 regulates ERISA plans by creating a funding mechanism not provided by Congress. Hence, the fact that section 3111 regulates ERISA plans provides further support for the conclusion that section 3111 "relates to" ERISA plans and is preempted.

Federal case law directly on point supports our view that section 3111, by creating an additional funding mechanism for ERISA plans not provided for by Congress, "regulates," and hence "relates to," ERISA plans and is for that reason preempted. In *Iron Workers, supra*, 891 F.2d 548, the Fifth Circuit considered a Louisiana mechanics' lien law that was functionally identical to section 3111. Borden Chemical had entered into a contract for maintenance services with Terotechnology Corporation. A trade council, on behalf of several unions, executed a collective bargaining agreement with Terotechnology for work to be performed at the Borden plant. The agreement required Terotechnology to contribute to employee benefit funds for the work by its employees at the Borden plant. After a period of

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standard discussed above: "ERISA's preemption of 'State law' is only of such laws as regulate the '*terms and conditions*' of employer benefit plans." (*Parnas, supra*, 176 Cal.App.3d at p. 1201, italics in original.) As the *Parnas* decision conflicts with *Pilot Life* and our decision in this case, it is disapproved. Similarly, *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Assn.* (1990) 221 Cal.App.3d Supp. 21 [270 Cal.Rptr. 608], which relies on Parnas in concluding that section 3111 is not preempted, is disapproved.

[6] In discussing the interrelationship of the "purports to regulate" and "relate to" language, the Ninth Circuit Court of Appeals stated, "[t]he narrower 'purports to regulate' test is included within the broader 'relates to' test. [Citations.] Thus a finding that a statute 'purports to regulate' an employee benefit plan necessarily includes a finding that it 'relates to' such a plan." (Fn. omitted. *Jones, supra*, 846 F.2d at p. 1218.)

compliance, Terotechnology stopped contributing. The unions and funds filed liens pursuant to Louisiana's Private Works Act against Borden's real property. The Fifth Circuit held that the Louisiana law, because it created an additional method of enforcing the funding requirements of employee benefit plans, was preempted under section 514(a) of ERISA.

(5) In reaching its conclusion, the *Iron Workers* court discussed the kinds of state laws that have been found to "relate to" employee benefit plans: "The state laws that have previously been found to be preempted by section 514(a) [of ERISA] because they 'relate' to ERISA plans fall into four categories[: (1)] laws that regulate the type of benefits or terms of ERISA plans[; (2)] laws that create reporting, disclosure, funding or vesting requirements for ERISA plans[; (3)] laws that provide rules for the calculation of the amount of benefits to be paid under ERISA plans[; and (4)] laws and common law rules that provide remedies for misconduct growing out of the administration of the ERISA plan. The principle underlying all of these decisions [preempting state laws] would appear to be that the state law is preempted by section 514(a) if the conduct sought to be regulated by the state law is 'part of the administration of an employee benefit plan': that is, *the state law is preempted if it regulates the matters regulated by ERISA: disclosure, funding, reporting, vesting, and enforcement of benefit plans.*" (*Iron Workers, supra,* 891 F.2d at p. 553, italics added.)

(1e) Section 3111 specifically purports to regulate employee benefit plans by providing an additional method of funding, a lien against real property, which is not provided by, and therefore is not allowed under, ERISA. In essence, section 3111 creates a new state cause of action for the collection of contributions owed to benefit plans and makes an additional entity liable for such contributions. Lien actions under section 3111, which are governed by state law, are not subject to the jurisdiction of the federal courts under ERISA. (*Carpenters Southern Cal. Admin. v. Majestic Housing*(9th Cir. 1984) 743 F.2d 1341, 1346.)[7]

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[7] In *Majestic Housing, supra,* the Ninth Circuit Court of Appeals considered the connection between section 3111 and ERISA. The court

ERISA preempts new state-law causes of action for the collection of contributions because, consistent with its goal of providing "appropriate sanctions and ready access to federal courts" (29 U.S.C. § 1001(b)), ERISA itself provides the remedies for the collection of contributions. Section 502(a) of ERISA (29 U.S.C. § SC 1132(a)) provides in part that "[a] civil action may be brought—. . . [¶] (3) by a participant, beneficiary, or *fiduciary* (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) *to enforce any provisions of this title or the terms of the plan.*" (29 U.S.C. § 1132(a)(3), italics added.)

Additionally, section 515 of ERISA (29 U.S.C. § 1145) provides: "Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such an agreement." Hence, a participant, beneficiary or a fiduciary can bring an action under section 502(a) of ERISA (29 U.S.C. § 1132(a)) to enforce an employer's obligation under section 515 of ERISA (29 U.S.C. § 1145).[8]

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held that "[an] action to enforce [a] lien against Majestic's property [was] one under state, and not federal law. Consequently, the district court was without jurisdiction to rule on the motion for summary judgment." (*Id.* at p. 1346.)

[8] CSCAC argues that ERISA, as originally enacted in 1974, did not include a cause of action for the collection of benefit contributions and, hence, Congress could not have intended to preempt state law causes of action. The dissent adopts CSCAC's position, arguing further that we must determine the scope of ERISA's preemption provision as of 1974, without regard to subsequent amendments. (Dis. opn., *post*, pp. 1059-1060.)

The premise of these arguments is incorrect. Even in 1974 ERISA contained a cause of action to enforce its terms, section 502 (29 U.S.C. § 1132), and the remedies provided in section 502 are exclusive. With the addition of section 515 of ERISA (29 U.S.C. § 1145) in 1980, Congress sought only to streamline the process of collecting delinquent

(6) As the Court of Appeal in this case and the federal court in *Iron Workers, supra,* noted, *Pilot Life, supra,* establishes that the remedies in section 502 of ERISA are exclusive and displace state laws which purport to create parallel remedies. "[T]he detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme.... The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 'The ... carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted ... provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.' " (*Iron Workers, supra,* 891 F.2d at p. 555, quoting *Pilot Life, supra,* 481 U.S. at 54 [95 L.Ed.2d at pp. 52], italics in original.) "The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, ... would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) [of ERISA] could be supplemented or supplanted by varying state laws." (*Pilot Life, supra,* 481 U.S. at p. 56 [95 L.Ed.2d at p. 53].)[9]

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contributions exclusively under federal law. (See 126 Cong. Rec. 23029 (1980): "Recourse available under current law for collecting delinquent contributions is insufficient and unnecessarily cumbersome.... Federal pension law must permit trustees of plans to recover delinquent contributions efficaciously, and without regard to issues which might arise under labor-management relations law—other than 29 U.S.C. § 186.")

[9] Various amici curiae have asserted that section 3111 is saved from preemption by a statement in the legislative history of the Multi-Employer Pension Plan Amendments Act of 1980 (Pub.L. No. 96-364, 94 Stat. 1208 [hereafter Amendments]). We disagree. The Amendments, among other things, added section 515 of ERISA (29 U.S.C. § 1145) and revised section 502(g) of ERISA (29 U.S.C. § 1132(g)) pertaining to awards of attorney fees, costs, and liquidated damages in actions for delinquent contributions.

Commenting on the statutory provisions of section 502(g) of ERISA (29 U.S.C. § 1132(g)), the relevant House committee stated: "the Bill preempts any state or other law which would prevent the award of

(1f) In essence, CSCAC's action under section 3111 is a civil action by a fiduciary to enforce the provisions of ERISA with regard to employer contributions (i.e., § 502(a) of ERISA, 29 U.S.C. § 1132(a) & § 515 of ERISA, 29 U.S.C. § 1145) and to enforce the terms of the plan (i.e., the funding contributions required by the collective bargaining agreement). Like the Louisiana law in *Iron Workers, supra,* 891 F.2d 548, the state is attempting to "regulate" the terms and conditions of a pension plan through the use of a new cause of action, its lien laws. State laws, however, may not be used to supplement or supplant the civil enforcement scheme developed by ERISA. (See *Pilot Life, supra,* 481 U.S. at p. 56 [95 L.Ed.2d at p. 53].)

In summary, by providing an additional cause of action to those already provided by ERISA, section 3111, like the Louisiana law in *Iron Workers (supra,* 891 F.2d 548), "regulates" ERISA plans. This recognition further supports the conclusion that the section "relates to" ERISA plans and is, thus, preempted.

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reasonable attorney's fees, court costs or liquidated damages, or which would limit liquidated damages to an amount below the twenty percent level. However, the Bill does not preclude the award of liquidated damages in excess of the twenty percent level if an award of such a higher level of liquidated damages is permitted under state or other law. The Committee Amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multiemployer contributions." (H.R. No. 96-868, pt. 2, on H.R. No. 3909 of the House Com. on Ways and Means, 96th Cong., 2d Sess., pp. 3037-3038 (1980).)

Amici curiae argue that this section of the legislative history indicates that Congress did not intend to preempt state laws granting mechanics' lien rights to employee benefit plans. This reading of the House report is too broad. This single comment, pertaining to specific collateral remedies such as liquidated damages and attorney fees against delinquent employers, does not evidence a legislative intent to allow for remedies against delinquent employers that are not provided for in ERISA. Such an interpretation of this comment would vitiate the extensive legislative history of ERISA and the numerous United States Supreme Court statements regarding Congress's choice of certain enforcement provisions and the exclusion of all others.

Other Arguments

Invoking *Mackey v. Lanier Collections Agency & Serv., supra,* 486 U.S. 825 [100 L.Ed.2d 836, 108 S.Ct. 2182] (*Mackey*), CSCAC argues that section 3111 is not preempted because it is an "ancillary state collection remed[y]." In *Mackey,* a creditor sought to garnish money that an ERISA plan owed to its beneficiaries, who were the creditor's debtors. The *Mackey* court analyzed a Georgia antigarnishment statute and Georgia's general garnishment procedures. The court concluded that a Georgia statute that barred the garnishment of funds or benefits of an employee benefit plan subject to ERISA was preempted by ERISA. The court held that this antigarnishment statute expressly referred to, and solely applied to, ERISA plans, and that state laws which make reference to ERISA plans are laws that "relate to" those plans within the meaning of section 514(a) of ERISA (29 U.S.C. § 1144(a)). (*Mackey, supra,* 486 U.S. at p. 829 [100 L.Ed.2d at p. 843].) The ERISA plan beneficiaries in *Mackey* further argued that the entire Georgia garnishment procedure is preempted by ERISA. The United States Supreme Court held that Georgia's garnishment statute, as a generally applicable mechanism for the enforcement of judgments, was not preempted by ERISA. (*Id.* at p. 841 [100 L.Ed.2d at p. 851].)

Mackey's analysis of Georgia's general garnishment procedures does not save section 3111 from preemption. The decision concerned a third party action for enforcement of judgments against beneficiaries of an ERISA plan. ERISA does not contain remedial provisions for such actions. Largely for this reason, the United States Supreme Court concluded that "state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA; otherwise, there would be no way to enforce such a judgment won against an ERISA plan." (*Mackey, supra,* 486 U.S. at p. 834 [100 L.Ed.2d at p. 846].) The present case is not similar because ERISA expressly provides remedies for recovery of delinquent contributions to employee benefit plans.

Furthermore, in holding that the Georgia garnishment statute was not preempted, the high court noted that the statute "create[d] no substantive causes of action, nor new bases for relief, or any grounds for recovery; [it] does not create the rule of decision

in any case affixing liability." (*Mackey, supra*, 486 U.S. at p. 834, fn. 10 [100 L.Ed.2d at p. 847].) In contrast, California's trust fund lien statute does more than provide a new enforcement mechanism for collecting judgments; it creates new substantive rights. (Cf. *Iron Workers, supra*, 891 F.2d at p. 555.) Section 3111 permits the creditor (the trust fund) to enforce a debt (for outstanding fringe benefit contributions) not against the debtor (the defaulting employer), but against the property of a third party that is not a party to the collective bargaining agreement. Section 3111 gives a trust fund a right to a lien against the property of third parties, such as El Capitan, that the fund would not, and does not, have under ERISA. In the absence of section 3111, El Capitan would have no liability to the funds for the fringe benefit contributions. Therefore, section 3111 cannot be upheld under *Mackey* as it creates a new substantive right against the property of a third party that is not created by ERISA and, thus, goes beyond being a mere means of enforcing a judgment. (See *Iron Workers, supra*, 891 F.2d at p. 556.)

CSCAC next argues that section 3111 is not preempted because "[i]t regulates land rights, historically a power reserved to the state." (7) However, "[i]n order to avoid preemption, it is not sufficient that a state statute represent the exercise of traditional state power. [Citation.] A purported fundamental state interest is relevant only when there is an element of uncertainty as to whether the challenged state law falls within the scope of the ERISA preemption clause. . . . [¶] However, the strength of the state interest is of no consequence where the state law clearly 'purports to regulate' an employee benefit plan. 'In order to avoid being preempted, a state law in addition to being an exercise of traditional police powers must also *affect the plan "in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan."*' " (*Jones, supra*, 846 F.2d at pp. 1220-1221, citations omitted, italics added.) Section 3111 does not affect ERISA plans merely in a "tenuous, remote, or peripheral" manner; instead, it has a substantive effect. The section makes an additional entity liable to plans for contributions. (See *Iron Workers, supra*, 891 F.2d at p. 556.)

Lastly, CSCAC argues that section 3111 "provides an effective and necessary remedy for employee benefit plans." That this may be so is irrelevant. The United States Supreme Court has specifically held that even state laws which may help to effectuate ERISA'S underlying purposes are still preempted. (*Mackey, supra*, 486 U.S. at pp. 829-830 [100 L.Ed.2d at p. 844].) In *Mackey*, the United States Supreme Court explained that " '[t]he pre-emption provision [of § 514(a)]. . . . displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements.' *Metropolitan Life Ins. Co. v. Massachusetts*, [471 U.S. 724, 739]. . . . *Legislative 'good intentions' do not save a state law within the broad pre-emptive scope of § 514(a).*" (*Mackey, supra*, 486 U.S. at pp. 829-830 [100 L.Ed.2d at p. 844], italics added.) Thus, the fact that the trust fund lien procedure may provide a remedy useful to CSCAC is irrelevant.

Disposition

For the foregoing reasons, we conclude that Civil Code section 3111 is preempted by ERISA. The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Kennard, J., Arabian, J., and Baxter, J., concurred.

BROUSSARD, J.—I dissent. In *Mackey v. Lanier Collection Agency & Service* (1988) 486 U.S. 825 [100 L.Ed.2d 836, 108 S.Ct. 2182] (hereafter *Mackey*), the United States Supreme Court adopted two fundamental rules for the construction and application of the express preemption provision (29 U.S.C. § 1144(a)) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.). The majority violate both of them. *Mackey* also sets out three areas of state law which are not preempted. All three are applicable in the instant case. The majority ignore two areas and unduly limit the third. The majority opinion attempts to dispose of *Mackey*as a case which merely deals with garnishment. However, it is clear that the express statements and the reasoning of the high court are not

limited to garnishment but provide broad instruction as to the state laws which are not preempted.

While it is, of course, proper to emphasize the broad language used by the United States Supreme Court in describing the preemption clause of ERISA, we may not stop there, but must also recognize the limitations on preemption. And when we recognize the correct function of a mechanics lien and the relationship of the lien provided by Civil Code section 3111 to employee compensation, it is clear under *Mackey* that we may not discriminate against ERISA plans by denying them liens given to others similarly situated, that we may not discriminate against ERISA plan members in providing remedies for recovery of compensation, that Congress did not intend to preempt state law liens, including mechanics liens, and that, although probably not essential to the decision in the instant case, Congress intended to permit certain state law actions by ERISA plans to recover delinquent employer contributions.

I. The Preemption Clause and Its Expansive Nature

The preemption clause of ERISA is very broad and encompassing, and although it could be read as preempting the application of state law in any case in which an ERISA plan is a party, it is settled that state law can be applied to some cases involving ERISA plans and that we look to congressional intent in determining which state laws may be applied. The clause preempts "any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan. . . ." (29 U.S.C. § 1144(a), italics added.) "The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." (29 U.S.C. § 1144(c)(1).)

The United States Supreme Court has characterized the provision as "deliberately expansive" (*Pilot Life Ins. Co. v. Dedeaux* (1986) 481 U.S. 41, 46 [95 L.Ed.2d 39, 46, 107 S.Ct. 1549]), and as establishing "as an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA." (*FMC Corp. v. Holliday* (1990) 498 U.S. ____, ____ [112 L.Ed.2d 356, 364, 111 S.Ct. 403, 407].) A state law relates to a benefit plan, in the normal sense of the

phrase, " 'if it has a connection with or reference to such a plan.' " (*Pilot Life Ins. Co. v. Dedeaux, supra*, 481 U.S. 41, 47 [95 L.Ed.2d 39, 48].)

The language of the preemption provision and of the United States Supreme Court cases is so broad that it could be understood as meaning that state law could never be applied in litigation involving an ERISA plan, except in cases coming within the express exemption of the preemption clause for cases involving state laws regulating insurance, banking or securities. However, such a broad interpretation of the provision and the cases would be improper.

" '[T]he question whether a certain state action is pre-empted by federal law is one of congressional intent. "The purpose of Congress is the ultimate touchstone." ' [Citations.] To discern Congress' intent we examine the explicit statutory language and the structure and purpose of the statute. (See *FMC Corp. v. Holliday*, 498 U.S. ____, ____, 111 S.Ct. 403, 407, 112 L.Ed.2d 356 (1990), citing *Shaw v. Delta Air Lines, Inc., supra*, 463 U.S., at 95, 103 S.Ct., at 2898-99)." (*Ingersoll-Rand Co. v. McClendon* (1990) ____ U.S. ____, ____ [112 L.Ed.2d 474, 483, 111 S.Ct. 478, 482].)

In the recent case of *Ingersoll-Rand*, the high court addressed the purpose of the preemption clause. In that case a fired employee claimed that he was wrongfully terminated for the principal reason that his pension was about to vest after nearly 10 years of employment and that the employer sought to avoid the expense of the pension. The court explained the purpose of the preemption provision as follows: The preemption provision "was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government. Otherwise, the inefficiencies created could work to the detriment of plan beneficiaries. *FMC Corp.*, 498 U.S. at ____, 111 S. Ct., at 408 (citing *Fort Halifax*, 482 U.S., at 10-11, 107 S.Ct., at 2216-17); *Shaw*, 463 U.S. at 105, and n. 25, 103 S.Ct., at 2904, and n. 25.) Allowing state based actions like the one at issue here would subject plans and plan sponsors to burdens not

unlike those that Congress sought to foreclose through [the preemption provision]. Particularly disruptive is the potential for conflict in substantive law. It is foreseeable that state courts, exercising their common law powers, might develop different substantive standards applicable to the same employer conduct, requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." (*Ingersoll-Rand Co. v. McClendon, supra*, 498 U.S. ____, ____ [112 L.Ed.2d 474, 486, 111 S.Ct. 478, 484].)

II. Congressional Intent and the Preemption Clause

The majority, in applying ERISA's express preemption clause, rely upon 29 United States Code section 1145, which requires that employers who have agreed to make contributions to a multiemployer plan shall make those contributions to the extent not inconsistent with law. This provision provides federal causes of action to recover employer delinquencies. However, the section was not part of ERISA as originally enacted and for this reason it furnishes no support for the view that the preemption clause in ERISA preempted such causes of action. In *Mackey*, the United States Supreme Court made clear that in interpreting the preemption clause of ERISA, the congressional intent to be determined is the intent of the Congress that enacted the preemption clause and not the intent of subsequent Congresses. "[W]e must look at the language of ERISA and its structure, to determine the intent of the Congress that originally enacted the provision in question. 'It is the intent of the Congress that enacted [the section] . . . that controls.' *Teamsters v. United States*, 431 U.S. 324, 354, n. 39 (1977)." (*Mackey, supra*, 486 U.S. at p. 840 [100 L.Ed.2d 851, 108 S.Ct. at p.2191.)

The provisions of 29 United States Code section 1145 were added to ERISA in 1980 as part of the Multiemployer Pension Plan Amendments Act. Since it was not part of ERISA as originally enacted, it is improper for the majority to rely upon it in construing the express preemption provision.

Moreover, even if it were proper to consider the Multiemployer Pension Plan Amendments Act of 1980 in construing the express

preemption provision, the entire 1980 act and its legislative history must be considered, and when this is done it must be concluded that Congress sought to retain state law actions to recover delinquencies and only intended a limited preemption of state law governing actions to recover delinquencies. As will be pointed out later in this opinion in connection with implied preemption, it is clear that Congress, when it enacted the Multiemployer Pension Plan Amendments Act of 1980, *expressly* provided for the application of state law to actions for recovery of delinquencies in certain circumstances (29 U.S.C.; § 1132(g)), and that the legislative history of the act shows that Congress intended the preemption of state law only where it limited recovery against the employer to an amount less than federal law provided. The majority ignore 29 United States Code section 1132(g) and the legislative history dealing with preemption.

Accordingly, at the outset, we must conclude that the provisions of 29 United States Code section 1145 may not be considered in construing the preemption clause or to show an intent on the part of the Congress to preempt state laws permitting recovery for employer delinquencies equal to or greater than that permitted by federal law.

III. Laws Specifically Designed to Affect ERISA Plans

In *Mackey*, the high court stated that it has "virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted" under the preemption clause. (*Mackey, supra*, 486 U.S. at p. 829 [100 L.Ed.2d at p. 844, 108 S.Ct. at p. 2185.]) On the basis of this rule the high court invalidated a Georgia statute that exempted ERISA plans from the state's garnishment law. (*Ibid.*) The majority in their bottom line—by exempting ERISA plans from mechanics lien laws—violate the rule against special treatment of ERISA plans.

As pointed out above, the express preemption provision applies to "any and all State laws." That term applies not merely to statutes but also to "decisions . . . having the effect of law of any State." (29 U.S.C. § 1144(c)(1).) Accordingly, just as it is ordinarily improper for the Legislature to adopt statutes specifi-

cally designed to affect ERISA plans, it is improper for this court through its decisions to establish laws specifically designed to affect ERISA plans.

The ultimate effect of the majority opinion is to subject ERISA plans and members of ERISA plans to special treatment. Civil Code section 3110 grants mechanics liens to numerous specifically identified persons for services rendered when such persons have been unpaid and have contributed to an improvement. Civil Code section 3111 provides the same mechanics lien for ERISA plans which administer fringe benefits like health insurance and pension benefits. By permitting those enumerated in section 3110 to obtain liens but denying liens to ERISA plans, the majority single out ERISA plans for special treatment. The payments to the ERISA plan sought to be recovered are part of the compensation of those who furnish labor for the improvement. The net effect of the state law established by the majority is that employees who are not members of ERISA plans obtain liens for their entire unpaid compensation, whereas those who are members and receive part of their compensation through ERISA plans obtain a lien for only part of their compensation.

The majority seek to justify the special treatment of ERISA plans by asserting that, unlike those mentioned in Civil Code section 3110, ERISA plans do not furnish labor or materials to the construction project. (Maj. opn., *ante*, p. 1049.) However, as I demonstrate, the ERISA claim is part of the compensation for the worker and must be treated the same as the other compensation.

The cases have recognized that the claims of the ERISA plans are part of the employee's compensation and must be treated the same as the compensation. In *Plumber's Local 458 v. H. Immel, Inc.* (1989) 151 Wis.2d 233, [445 N.W.2d 43, 44-45], the mechanics lien statute provided for a lien for "any person furnishing labor," and the court concluded that the lien statute could not be restricted to hourly wages but included claims by ERISA plans for funds for fringe benefits.

Similarly, in the closely analogous situation presented in *United States v. Carter* (1956) 353 U.S. 210 [1 L.Ed.2d 776, 77 S.Ct.

793], the issue was the liability of a surety to fringe benefit funds on a payment bond furnished by a contractor, as required by the Miller Act (40 U.S.C. § 269a et seq.), for the protection of persons furnishing labor or materials for the construction of federal buildings. The statute provided that every "person who has furnished labor or material in the work provided for in such contract . . . shall have the right to sue on such payment bond. . . for the sum justly due him." (40 U.S.C. § 270b(a). The court stated: "The Miller Act represents a congressional effort to protect persons supplying labor and material for the construction of federal public buildings in lieu of the protection they might receive under state statutes with respect to the construction of nonfederal buildings." (353 U.S. at p. 216 [1 L.Ed.2d at p. 782].) Among the protection under state statutes, obviously, is the mechanics lien statute applying to private buildings; thus, the issue is clearly analogous. Notwithstanding that the statute was phrased in terms "furnished labor," the court concluded that the fringe benefit funds could maintain an action on the bond. The court reasoned in part that the "contributions were a part of the compensation for the work to be done by [the] employees" and that trustees "stand in the shoes of the employees and are entitled to enforce their rights." (*Id.*, at pp. 217-218, 220 [1 L.Ed.2d at pp. 783-784]; see *Morrison-Knudsen Constr. Co. v. Director, OWCP* (1982) 461 U.S. 624, 631 [76 L.Ed.2d 194, 200, 103 S.Ct. 2045].)

A similar view is found in our code sections dealing with stop notices and state payment bonds (the state Miller Act counterpart), which treat claims by laborers and ERISA plans as being the same thing. (See Civ. Code, §§ 3181, 3247.)

Our court has long recognized the basic principle that claims for fringe benefits are part of the compensation and must be treated accordingly as to creditors' rights. Thus in *Dunlop v. Tremayne* (1965) 62 Cal.2d 427 [42 Cal.Rptr. 438, 398 P.2d 774, 17 A.L.R.3d 368], we held that under the preference statute applicable to assignments for the benefit of creditors, Code of Civil Procedure section 1204, health, welfare, and pension contributions would be included under the term "wages." The court reasoned: "The terms and conditions of the payments were

ascertained by the employers and representatives of the employees in wage negotiations, as part of a total wage package. Payments are made by the employer not as a gift but in consideration of the services of the employees. In an economic sense they are wages." (62 Cal.2d at p. 431.)

We cannot ignore the practical effect of our decisions. ERISA plans and others who have unpaid claims based on construction projects are usually unpaid because there are not enough funds to go around. To permit architects, engineers, surveyors, mechanics, laborers and others enumerated in Civil Code Section 3110 to obtain liens while denying liens to ERISA plans is to make ERISA plans second-class creditors. The effect of the preference will ordinarily mean that section 3110 creditors will have a preference and will receive all or part of their claims while ERISA plans will receive none. Making the plans second-class creditors flies in the face of ERISA's express policy to protect the interest of participants in the plans (29 U.S.C. § 1001(b), (c)) and, more particularly, ERISA's express policy "to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans" and "to provide a financially self-sufficient program for the guarantee of employer benefits under multiemployer plans." (29 U.S.C. § 1001a(c)(3), (4).)

The express preemption clause in ERISA is directed at state law generally, including both statutory and decisional law. Whether special treatment of ERISA plans is accomplished by a statutory exemption from general law requirements as in *Mackey*, or by a decision of the court permitting application of a specific provision to everyone by enumerating them individually but leaving out ERISA plans, the effect is the same. The special treatment is preempted and, because the majority at the bottom line provide for special treatment, the law enunciated in their decision is contrary to federal law and is thus preempted. Moreover, the decision discriminates against union employees belonging to multiemployer ERISA plans by denying them lien rights for the full amount of their compensation—while allowing non-ERISA employees liens for all of their compensation.

IV. State Laws Not Preempted

Congress has not preempted state lien laws.

Mackey establishes three classes of state laws that are not preempted.

The first class is those cases where Congress has provided for the application of state law. (*Mackey, supra,* 486 U.S. at p. 832 [100 L.Ed.2d at pp. 845-846, 108 S.Ct. at pp. 2186-2187].) As will appear in part VI of this opinion, Congress has expressly provided for the use of state law to enforce the duty to make payments to ERISA plans. "ERISA plans may be sued in a second type of civil action, as well. These cases—lawsuits against ERISA plans for run-of-the-mill claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan—are relatively commonplace." (486 U.S. at p. 833 [100 L.Ed.2d at p. 846, 108 S.Ct. at p. 2187], fn. omitted.) As will also appear, mechanics liens are such run-of-the-mill claims.

The third class was the one before the high court, garnishment. Because it was directly involved in *Mackey* it is treated first. The reasoning of the high court is much broader than garnishment used to collect a judgment, and it is improper to treat this part of the *Mackey* opinion, as the majority do (maj. opn., *ante,* at pp. 1054-1055), as merely establishing a garnishment exception to the preemption clause. The reasoning is applicable not merely to garnishment but to all enforcement mechanisms for collecting money judgments and also prejudgment mechanisms to secure the collection of debts, including liens such as the mechanics lien before us. And, while *Mackey* obviously involved a suit against an ERISA plan, it is apparent the same view should apply when the plan sues.

In *Mackey,* the court reasoned: "ERISA does not provide an enforcement mechanism for collecting judgments won in either of these two types of actions. Thus, while section [1132(d)], the 'sue and be sued' provision, contemplates execution of judgments won against plans in civil actions, it does not provide mechanisms to do so. Moreover, Federal Rule of Civil Procedure 69(a), which would apply when either type of civil suit discussed above is brought against an ERISA plan in federal court, defers to state

law to provide methods for collecting judgments. [Citation.] Consequently, state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA; otherwise, there would be no way to enforce such a judgment won against an ERISA plan. If attachment of ERISA plan funds does not 'relate to' an ERISA plan in any of these circumstances, we do not see how respondent's proposed garnishment order would do so." (486 U.S. at pp. 833-834 [100 L.Ed.2d at p. 846, 108 S.Ct. at p. 2187], fn. omitted.)

Federal Rules of Civil Procedure, rule 69(a) provides that proceedings "supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held." It follows that parties seeking to obtain a judgment lien must do so on the basis of state law. Since ERISA does not provide for judgment liens and, so far as I am aware, the federal government has not adopted a recording act for federal real property judgment liens, the proceedings to obtain and enforce judgment liens thus are entirely matters of state law even where the judgment is a federal judgment.

Generally, proceedings to establish and enforce liens are run-of-the-mill state law proceedings. The preliminary 20-day notice of intent to file a mechanics lien (Civ. Code, §§ 3097, 3114) is probably the most often served legal document in our state. Similarly, mortgages and deeds of trust are probably among the most frequently recorded documents in this state, and, of course, the purpose of the recording is to establish the lien. The reconveyance to cancel the mortgage or deed of trust lien is recorded with equal frequency.

Furthermore, to conclude that state lien laws are preempted when ERISA plans are involved means that millions, perhaps billions, of dollars invested by ERISA pension plans in notes secured by mortgages and deeds of trust are jeopardized. Those liens, like mechanics liens, provide an "additional cause of action" in the property of a fourth party, a party other than the employer, employee or the plan, and ERISA does not provide a method to enforce mortgages. To suggest that a Congress which adopted a comprehensive law to protect the interests of participants in

employee benefit plans (29 U.S.C. § 1001(b)) intended to preempt state lien laws strains credulity.

Generally, state law prejudgment mechanisms for securing the ultimate payment of debts are utilized by the federal courts. While Federal Rules of Civil Procedure, rule 69(a) provides for the adoption of state law methods to obtain collection after judgment, rule 64 provides for the adoption of prejudgment state law methods to secure payment of debts. The rule provides that the remedies thus available "include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action." Under this provision it is clear that the builders of a building for an ERISA plan and their workers should be able to secure and enforce in federal court (when jurisdiction is proper) a mechanics lien arising against the property under state law. Likewise, ERISA plans under this provision should be entitled to enforce state law liens, including mechanics liens.

No distinction may be made as to liens arising from the provisions of ERISA plans and other liens in favor or against ERISA plans. In *Mackey,* the Solicitor General argued that while other types of garnishment may be permitted with respect to ERISA plans, the court should not permit garnishment when it will affect whether benefits will be paid to a plan participant. ERISA expressly provides that a participant or beneficiary may bring an action to recover benefits due, to enforce rights under the plan, to clarify rights under the plan and to obtain equitable relief (29 U.S.C. § 1132(a)(1)(B), (a)(3)), and *Pilot Life Ins. Co. v. Dedeaux, supra,* 481 U.S. 41 (hereafter *Pilot Life*), held that ERISA preempted state law causes of action by a participant or beneficiary to enforce his or her rights.

The *Mackey* court rejected the Solicitor General's argument on the ground that the preemption clause did not permit the distinction—it could not be held that the garnishment did not "relate to" the plan when fourth parties were involved but did "relate to" the plan when the rights of plan participants were involved. (486 U.S. at p. 836 [100 L.Ed.2d at p. 848, 108 S.Ct. at pp. 2188-2189.)

Similarly, here, it may not be concluded that mechanics liens do not "relate to" the plan when laborers or suppliers seek to establish liens against an office building built by a plan, but "relate to" the plan when it seeks to recover employer contributions.

The majority argue that Civil Code section 3111 creates new substantive rights permitting the plan to enforce a debt against property of a fourth party who is not a party to the collective bargaining agreement. (Maj. opn., *ante,* p. 1055) However, the lien does not create personal liability of the owner. It has long been recognized that the lien of the mechanic, artisan and supplier is equitable because those parties have created the very property upon which the lien attaches. (*Tuttle v. Montford* (1857) 7 Cal. 358, 360; *Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803, 825-827 [132 Cal.Rptr. 477, 553 P.2d 637].) Obviously, return of the materials or labor to the unpaid supplier or laborer is not a viable option, and the law's recognition of the unpaid supplier's and laborer's contributions to the improvement does not create a debt or personal liability on the part of the owner, but only an interest in the property they helped create.

The fact that the mechanics lien may provide a priority against fourth parties, so that if the debt is unpaid the lienor may proceed to the detriment of fourth parties, does not mean that a personal cause of action is created. The effect of a lien against property is to give the lienor priority against some other claimants to the property, such as owners, subsequent mortgagees, judgment lienors or purchasers. In other words, the fact that a lien may prejudice fourth party claimants is not unique to mechanics liens but is common to all liens, and the effect in all cases is to give the lienor an actionable claim against the property affecting fourth parties with lesser priority. Only when the employer and the owner are the same, such as a specification builder, will the owner be individually liable, and then his liability exists even though the plan does not seek to enforce the lien. As we have seen, the ERISA plan merely stands in the shoes of the workers and seeks recovery of their compensation, so its lien also is based upon the creation of the very property upon which the lien attaches.

The fact that California has created a cause of action limited to property rights of a fourth party does not mean there is preemption. The Georgia garnishment statute upheld in *Mackey* created a cause of action in favor of a fourth party against ERISA plans. ERISA is fundamentally concerned with the relationship between the members of the plan, employers, and the plan and its fiduciary, and hardly any of its provisions are concerned with the rights and duties of fourth parties.

I conclude that ERISA, which does not preempt state laws providing mechanisms to collect judgments, also does not preempt state laws providing prejudgment mechanisms to secure the payment of debts such as liens, and that this is true even if Congress has preempted causes of action to collect the debt.

V. The Cause of Action to Recover Employer Payments

Since the instant case involves a state law lien which is not preempted whether or not the related cause of action to collect the debt is preempted, it does not seem necessary to reach the issue whether ERISA's preemption clause preempts actions to enforce the agreed payment. Nevertheless, I will deal with the issue because the majority address it. My conclusion is that ERISA, as originally enacted, did not provide a federal cause of action for plans to recover a money judgment against delinquent employers and that, if state law causes of action were found preempted, the fundamental congressional purpose of protecting employee benefits would be defeated.

As pointed out above, in interpreting the preemption clause we look to the intent of the Congress that enacted the clause and consider the structure of ERISA. In a comprehensive statute to regulate ERISA plans there are obviously three areas requiring regulation, namely, the relationship between the employer and the ERISA plan, the operation of the plan in using the assets, and the relationship between the plan and its members and beneficiaries.

The civil enforcement section of ERISA, as originally enacted, provided for a federal cause of action by a participant or beneficiary to recover benefits due from an ERISA plan, to enforce rights under the plan terms, and to clarify future rights. (29 U.S.C. § 1132(a)(1)(B).) A federal cause of action was also provided

for actions by the Secretary of Labor, participant, beneficiary, or fiduciary against fiduciaries for breach of duty by a fiduciary. (29 U.S.C. § 1132(a)(2).) There was a general provision to enforce the terms of the plan, but that provision was limited to equitable relief. Subparagraph (3) of 29 United States Code section 1132(a) provided for an action "by a participant, beneficiary or fiduciary (A) to *enjoin* any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate *equitable* relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." (Italics added.)

It is apparent that subparagraph (3) of 29 United States Code section 1132(a) only provides for equitable proceedings. Because subparagraph (1) expressly provides for causes of action to recover benefits due to participants and beneficiaries, and because they are mentioned along with fiduciaries in subparagraph (3), it is clear that the latter subparagraph does not authorize an action at law to recover a money judgment against delinquent employers, and that as originally enacted Congress did not provide for such a federal cause of action. The fact that in 1980 Congress found it necessary to add provisions for a money judgment against a delinquent employer (29 U.S.C. §§ 1145, 1132(g)) lends support to the conclusion that, as originally enacted, ERISA did not provide for such an action.

Once it is recognized that Congress did not provide a federal cause of action to recover delinquencies in ERISA as originally enacted, we must conclude that Congress did not intend to preempt such causes of action under state law. A conclusion that there was no action to collect employer delinquencies under either federal or state law would simply defeat the fundamental purpose of ERISA to protect employee benefit rights. (29 U.S.C. § 1001.) We cannot attribute such an intent to Congress.

VI. Implied Preemption of Causes of Action for Delinquencies

Even though the express preemption clause of ERISA did not preempt state law causes of action to recover money judgments

for employer delinquencies, the question remains whether the 1980 amendments to ERISA in themselves established an intent to preempt the state law causes of action. Although the existence of a detailed regulatory scheme does not by itself imply preemption, special features of a law may do so, including that the state law provides a parallel scheme of federal rights. (See *Ingersoll-Rand Co. v. McClendon, supra*, 498 U.S. ____, ____ [112 L.Ed.2d 474, 486-487, 111 S.Ct. 478, 484-486].)

The 1980 amendments included 29 United States Code section 1145, which imposed a federal duty upon employers to make their contributions to a multiemployer plan, and 29 United States Code section 1132(g), which provided the damages to be awarded in actions to enforce section 1145. However, section 1132(g)(2)(C) expressly provides for application of state law in certain circumstances, and the legislative history of the 1980 enactment makes clear that the 1980 amendments were intended to retain state law causes of action and to preempt state law only insofar as it provided for lesser damages than those provided by Congress.

The fact that Congress has provided for damages to be fixed in part under state law contemplates state law causes of action to determine what are state law damages. The legislative history of the amendments makes clear that this is exactly what Congress contemplated.

The staff report of the Senate Committee of Labor and Human Relations states that the Multiemployer Pension Plan Amendments Act Of 1980 was intended "to promote the prompt payment of contributions and assist plans in recovering the cost incurred in connection with delinquencies." (Staff Rep. of the Sen. Com. on Labor and Human Relations, Sen. No. 1076: Multiemployer Pension Plan Amendments Act of 1980, 96th Cong., 2d Sess., p. 44 (1980) Sen. Labor Com. Print.) Congress recognized that the instability of the construction industry caused funds to accrue benefit obligations without collecting sufficient contribution to fund those benefits. (H.R.Rep. No. 96-869(I), 2d Sess., p. 51 (1980), reprinted in 1980 U.S. Code Cong. & Admin. News, pp. 2918, 2921.) "The Bill preempts any state or other law which would prevent the award of reasonable attorney's fees, court costs or liquidated damages, or which would limit liquidated

damages to an amount below the 20 percent level. *However, the Bill does not preclude the award of liquidated damages in excess of the 20 percent level where an award of such a higher level of liquidated damages is permitted under applicable State or other law. The Committee amendment does not change any other type of remedy permitted under State or Federal law with respect to delinquent multiemployer plan contributions.*" (1980 U.S. Code Cong. & Admin. News, *supra*, at pp. 3037-3038, italics added.)

It is thus clear that in 1980 Congress intended to retain state causes of action and did not intend to preempt state causes of action to recover delinquencies except to the extent that such causes of action precluded an award of damages provided by the 1980 amendments.

VII. No Additional Remedies Language

In *Pilot Life*, the high court stated: "In sum, the detailed provisions of [29 United States Code § 1132(a)] set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for *prompt and fair claims settlement procedures* against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan *participants and beneficiaries* were free to obtain remedies under state law that Congress rejected in ERISA. 'The six carefully integrated civil enforcement provisions found in [29 United States Code § 1132(a)] as finally enacted . . . provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly." (481 U.S. at p. 54 [95 L.Ed.2d at p. 52], first and second italics added, third italics in original.)

In *Pilot Life*, it was held that a state law action for breach of the covenant of good faith and fair dealing brought by a plan participant for delay in paying benefits was preempted.

The majority rely upon the above quoted language in arguing that a state law cause of action to enforce claims for employer delinquencies is preempted. However, the language must be read

in context, and within its own limitations. To read the quoted language broadly as meaning that states may not provide *any* remedies in cases involving ERISA plans would be *directly contrary* to the subsequent *Mackey* case, decided shortly after *Pilot Life*. *Mackey* held that state law garnishment and run-of-the-mill causes of action were not preempted. It is apparent that the high court is not reading the language so broadly as to generally preempt state law remedies involving fourth parties since neither the majority nor the dissent in *Mackey* saw fit to even discuss the language. By its own terms *Pilot Life*'s language is limited to cases involving claims by participants and beneficiaries, and as pointed out above, 29 United States Code section 1132(a) provides both a federal cause of action for damages and equitable relief in such cases. By. contrast, the section as originally enacted provided only equitable relief where a plan sued to enforce the employer's promise to pay. There were not six carefully crafted remedies to sustain the rights of the plans. Additionally, the predicate for preemption is that Congress has provided remedies, but as pointed out above, Congress has not provided mechanisms, like liens, for collection of debts whether before or after judgment. I conclude that the broad language is inapplicable here because it is limited to actions by participants and beneficiaries, and to situations where Congress has provided remedies.

Iron Workers Pension Fund v. Terotechnology (5th Cir. 1990) 891 F.2d 548, 553, also relied upon by the majority (maj. opn., *ante*, p. 1053) is largely based on a broad reading of the no-additional-remedy language of *Pilot Life*. The court did not recognize that, as so read, *Pilot Life* would be in direct conflict with the later *Mackey* decision or that, even assuming that Congress provided a cause of action to collect delinquencies, it did not provide mechanisms to collect the amounts found due.

There also is no merit in the claim that Civil Code section 3111 is preempted because it imposes funding requirements. It does not establish the level of funding. It is no more a funding statute than statutes providing for attachment, garnishment, judgment liens, or mortgage liens are funding statutes.

VIII. Conclusion

I conclude that Civil Code section 3111 is not preempted by ERISA. California law, whether due to statute or judicial decision, is preempted by ERISA if it singles out ERISA plans for special treatment. ERISA plans, in seeking the agreed payments, stand in the shoes of their members furnishing labor for improvements, and by treating the plans differently than other compensation claims, including those of nonmembers, the majority opinion, not the Legislature, provides special treatment for ERISA plans and their members.

Although the sweep of the preemption clause in ERISA is broad, it does not preempt state lien laws or other pretrial mechanisms for securing payment of debts. In addition, although the point probably need not be decided, the absence of any federal cause of action at law to recover a money judgment for employer delinquencies precludes finding that Congress intended, when the preemption clause was adopted, to preempt such state causes of action because such preemption would mean that there was no cause of action, state or federal, to recover payments promised to ERISA plans. Given the fundamental, expressed purpose of Congress to protect employee benefits, an intent to preclude all such actions cannot be attributed to Congress. In the Multiemployer Pension Plan Amendments Act of 1980, Congress sought to add new remedies to permit collection of employer delinquencies and sought to preempt state law remedies only insofar as they precluded the full recovery provided by federal law. The congressional history shows that Congress believed there were state remedies to recover delinquencies and intended to preserve them.

Civil Code section 3111 has not been preempted, and the judgment of the Court of Appeal should be reversed.

Mosk, J., concurred.

Appendix B

Not To Be Published In Official Reports

In the Court of Appeal
of the State of California

Fifth Appellate District

Carpenters Southern California Administrative Corporation,
Plaintiff and Appellant,

v.

El Capitan Development Company,
Defendant and Respondent.

5 Civil No. F006233

(Super. Ct. No. 185215)

[Filed Mar 20 1987]

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Henry E. Bianchi, Judge.

Cox, Castle & Nicholson, James P. Watson, Law Offices of Charles P. Scully, Inc., Donald C. Carroll, De Carlo & Connor, John T. De Carlo, Law Offices of Richard A. Brownstein, Karen L. Holliday, for Plaintiff and Appellant.

Littler, Mendelson, Fastiff & Tichy, Karen E. Ford and Major Williams, Jr., for Defendant and Respondent.

Appellants, Carpenters Southern California Administrative Corporation (hereafter CSCAC) filed a complaint in Kern County Superior Court against El Capitan Development Company (hereafter El Capitan) and numerous Does, with the purpose of foreclosing on mechanics' liens. CSCAC had filed the mechanics' liens in order to collect fringe benefit contributions allegedly due its members pursuant to a collective bargaining agreement entered into with a subcontractor. During the term of the agreement, CSCAC members who were carpenters coming

under the collective bargaining agreement were employed by the subcontractor, who in turn worked on El Capitan's property. The subcontractor allegedly failed to pay fringe benefit contributions in excess of $121,000 under the terms of the collective bargaining agreement.

El Capitan demurred. In the demurrer, it was argued the complaint failed to state a cause of action because the California statutory lien procedure upon which it was based (Civ. Code, § 3111)[1] was preempted by the Employee Retirement Income Security Act of 1974, as amended (hereafter ERISA). (See 29 U.S.C. 1144.) The demurrer was granted with leave to amend. Plaintiffs declined to amend (purportedly upon agreement by the parties. Judgment was entered on August 8, 1985. CSCAC timely appeals.

FACTS

Both parties have attempted to abbreviate the facts since the issue presented is ultimately one of law and many of the facts are undisputed.

CSCAC is the administrator and assignee of rights involving various multi-employer trust funds. The carpenters' trust funds are such multi-employer benefit trusts. They are organized pursuant to section 302, subsection (c)(5) of the Labor Management Relations Act of 1947. (See 29 U.S.C. § 18, subsec. (c)(5).) As a result, CSCAC is a fiduciary, as defined by ERISA, and the trust funds in question are employee pension benefit plans or welfare plans within the meaning of ERISA. (See 29 U.S.C. § 1002, subsecs. (1), (2)(A), and (21)(A).)

The trust funds in question are funded through employer contributions for covered employees. In this case, those employees were members of unions affiliated with the United Brotherhood of Carpenters and Joiners of America (hereafter Union). Due to its fiduciary relationship with the unions, and in its role as administrator of the trust, CSCAC is under a duty to collect

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[1] All statutory references are to the Civil Code unless otherwise indicated.

contributions from employers who have failed to voluntarily make the required payments to the trust.

A condominium project was constructed on property in Bakersfield owned by El Capitan. The general contractor on the project was Grupe Construction. Grupe subcontracted with Pacific Southwestern Framing for part of the framing on the condominium project.

In the complaint, CSCAC alleged John Hall Enterprises, the subcontractor with whom the collective bargain agreement in question was made, was an entity related to Pacific Southwestern Framing. As a result, Pacific Southwestern Framing was bound by the agreement with Hall, and therefore responsible for making the contributions to the trust. However, neither El Capitan nor Pacific Southwestern Framing were signatories to the collective bargaining agreement.

Since the unpaid contributions represent work performed on El Capitan property, CSCAC asserted the position in its complaint that mechanics' liens could be placed upon the real property pursuant to section 3111. The section is part of the statutory scheme in California for allowing trust funds such as those in the present case to place liens on real property in an amount equal to the unpaid fringe benefit contributions under collective bargaining agreements. (See, e.g., §§ 3111, 3111.5, 304, 3114-3116, 3123, 3128-3140, 3143-3154.) Mechanics' liens in this action were timely recorded by CSCAC on the El Capitan property, and foreclosure was sought in this action as a means of collecting the trust fund contributions still owed.

IS APPLICATION OF SECTION 3111 IN THE INSTANT CASE PREEMPTED BY ERISA?

DISCUSSION

Section 3111 provides:

> "For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of

a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement."

The pertinent portions of ERISA Provide:

"[T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." (29 U.S.C. § 1144, subsec. (a); ERISA § 514, subsec. (a).)

"The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

"The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." (29 U.S.C. § 1144, subsecs. (c)(1) & (2); ERISA § 514, subsecs. (1) & (2).)

According to El Capitan, section 3111 is preempted by the above provisions of ERISA. The two-prong test for preemption in this area was recently expressed by the United States Court of Appeals for the Ninth Circuit:

"The U.S. Supreme Court cases addressing the issue of preemption of state statutes by § 514 have begun with the question of whether the challenged state statute 'related to' employee benefit plans within the meaning of § 514(a). *E.g. Metropolitan Life Ins. Co. v. Massachusetts*, 105 S.Ct. at 2389; *Shaw v. Delta Airlines, Inc.*, 468 U.S. at 98-101, 103 S.Ct. AT 2900-2902. The Supreme Court in *Shaw v. Delta Air Lines* discussed the 'relates to' provision of ERISA, in holding that the New York Human Rights and Disability Benefits Law 'related to' an ERISA plan. The Court stated that '[a] law "relates to" an employee benefit plan, in the

normal sense of the phrase, if it has a connection with or reference to such a plan.' *Shaw v. Delta Air Lines, Inc.* 463 U.S. at 96-97, 103 S.Ct. at 2899-2900. The Court applied this definition to the laws in question in *Shaw*, and held that the laws 'prohibit[ed] employers from structuring their employee benefit plans in a manner that discriminates on the basis of pregnancy,' and required employers to pay employees specific benefits. These requirements 'related to' plans and, thus, called into play the preemption clause. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 96-97, 103 S.Ct. at 2899-2900. The Court stated that Congress meant to use the statutory words in their broadest sense. *Id.* at 97, 103 S.Ct. at 2900.

". . . . . .

"In this Circuit, there is also a requirement that the state law be a rule which 'purports to regulate' ERISA plans. *Martori Bros. Distributor v. James-Massengale*, 781 F.2d 1349 (9th Cir.1986). *Martori* founder this second prong in *Lane v. Goren*, 743 F.2d 1337 (9th Cir. 1984), which held that the California Fair Employment and Housing Act, as applied to employees of a Trust which administered an ERISA plan, did not regulate the Plan as a plan, but only as any other employer would be regulated." (*United Food & Commercial Workers v. Pacyga* (9th Cir. 1986) 801 F.2d 1157, 1160.)

The state law in *Pacyga* was found to be one which "purports to regulate the Plan as a plan, inasmuch as it disallows a specific provision of the Plan, rather than regulating the activities of the Plan that are common to other groups." (*Ibid.*)

The question of preemption was vigorously researched and briefed, both in the trial court and in the briefs before us. However, in fairness to the court below, subsequent to its granting of the demurrer and entry of judgment, Division One of the First Appellate District handed down its opinion in *Carpenters Health & Welfare Trust Fund v. Parnas Corp.* (1986) 176 Cal.App.3d 1196.

The *Parnas* court reached the opposite result as that reached by the trial court in the instant case: section 3111 is not preempted by ERISA.

CSCAC did not discuss *Parnas* in its opening brief since, again, the case was filed after the opening brief. El Capitan, on the other hand, takes issue with the case and urges us not to follow it. In their reply brief, CSCAC argues that *Parnas* was correctly decided and should be followed. We agree.

El Capitan launches a long multi-pronged attack for preemption. However, we conclude the *Parnas* decision was correctly decided and that we should follow it. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450.)

Although we have differed with other appellate courts when convinced they are wrong (e.g., *Price v. Superior Court* (1986) 186 Cal.App.3d 156), we do so only when a strong showing is made that the case is wrong and deserves a different appellate opinion and possible attention from a higher court. In this case we have studied El Capitan's criticisms of the *Parnas* rationale and conclude *Parnas* made the proper distinction between federal substantive law relating to covered plans and state remedies to enforce the rights arising from such plans.

The judgment is reversed. Respondent to recover costs of appeal.

WOOLPERT
Acting P.J.

WE CONCUR:

BALLANTYNE
J.

VARTABEDIAN
J.*

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* Assigned by the Chairperson of the Judicial Council.

Appendix C

Order Granting Review

After Judgment by the Court of Appeal

Fifth District, Division One, No. F006233-S000772

In the Supreme Court of the State of California

In Bank

Carpenters Southern California Administrative Corporation,
Appellant

v.

El Capitan Development Company,
Respondent

[Filed Jun 18 1987]

Respondent's petition for review GRANTED. The cause is transferred to the Court of Appeal, Fifth Appellate District, for reconsideration in light of Pilot Life Insurance Company v. Dedeaux (1987) 107 S. Ct. 1549.

The request for an order directing publication of the opinion is denied.

Lucas
Chief Justice

Panelli
Associate Justice

Arguelles
Associate Justice

Eagleson
Associate Justice

Kaufman
Associate Justice

Associate Justice

Associate Justice

Appendix D

Certified for Publication

In the Court of Appeal of the State of California

Fifth Appellate District

Carpenters Southern California Administrative Corporation,
Plaintiff and Appellant,

v.

El Capitan Development Company,
Defendant and Respondent.

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5 Civil No. F008840

(Super. Ct. No. 185215)

OPINION

[Filed Jan 11 1988]

APPEAL from a judgment of the Superior Court of Kern County. Henry E. Bianchi, Judge.

Cox, Castle & Nicholson, James P. Watson, Law Offices of Charles P. Scully, Inc., Donald C. Carroll, De Carlo & Connor, John T. De Carlo, Law Offices of Richard A. Brownstein, Karen L. Holliday, for Plaintiff and Appellant.

Littler, Mendelson, Fastiff & Tichy, Karen E. Ford and Major Williams, Jr., for Defendant and Respondent.

Appellant, Carpenters Southern California Administrative Corporation (CSCAC), filed a complaint in Kern County Superior Court against El Capitan Development Company (El Capitan) and numerous Does, to foreclose on mechanics' liens. CSCAC had filed the mechanics' liens in order to collect fringe-benefit contributions allegedly due its members pursuant to its collective bargaining agreement with a subcontractor. During the term of the agreement, CSCAC members, who were carpenters covered by the collective bargaining agreement, were employed by the subcontractor, who in turn performed work on El Capitan's

Property. The subcontractor allegedly failed to pay fringe benefit contributions, in excess of $121,000, due under the terms of the collective bargaining agreement.

El Capitan demurred. It argued the complaint failed to state a cause of action because the California statutory lien procedure upon which it was based (Civ. Code, § 3111)[1] was Preempted by the Employee Retirement Income Security Act of 1974, as amended (ERISA). (See 29 U.S.C. 1144.) The demurrer was granted with leave to amend. Plaintiffs declined to amend (purportedly upon agreement by the parties.) Judgment was entered on August 8, 1985. CSCAC timely appealed.

We reversed the judgment. However, the California Supreme Court granted respondent's petition for review and transferred the matter to us for reconsideration in light of a subsequently decided case, *Pilot Life Insurance Company v. Dedeaux* (1987) 107 S.Ct. 1549 (hereinafter *Pilot Life*). We do so, and conclude the recent decision requires us to affirm the judgment on the basis of federal preemption.

FACTS

CSCAC is the administrator and assignee of rights involving various multi-employer trust funds, including the carpenters' trust funds. They are organized pursuant to section 302. subsection (c)(5) of the Labor Management Relations Act of 1947. (See 29 U.S.C. § 18, subsec. (c)(5).) As a result, CSCAC is a fiduciary, as defined by ERISA, and the trust funds in question are employee pension benefit plans or welfare Plans within the meaning of ERISA. (See 29 U.S.C. § 1002, subsecs. (1), (2)(A), and (21)(A).)

These trust funds are funded through employer contributions for covered employees. In this case, those employees were members of unions affiliated with the United Brotherhood of Carpenters and Joiners of America (Union). Due to its fiduciary relationship with the unions, and in its role as administrator of the

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[1] All statutory references are to the Civil Code unless otherwise indicated.

trust, CSCAC is under a duty to collect contributions from employers who have failed to voluntarily make the required Payments to the trust.

A condominium project was constructed on property in Bakersfield owned by El Capitan. The general contractor on the Project was Grupe Construction. Grupe subcontracted with Pacific Southwestern Framing for part of the framing on the condominium project.

In the complaint, CSCAC alleged John Hall Enterprises, the subcontractor with whom the collective bargain agreement was made, was an entity related to Pacific Southwestern Framing. As a result, Pacific Southwestern Framing was bound by the agreement with Hall, and therefore responsible for making the contributions to the trust. However, neither El Capitan nor Pacific Southwestern Framing signed the collective bargaining agreement.

Since the unpaid contributions represent work performed on El Capitan property, CSCAC alleged mechanics' liens could be placed upon the real property pursuant to section 3111. The section is part of California's statutory scheme which permits trust-fund liens on real property in amounts equal to the fringe benefit contributions owed under collective bargaining agreements. (See, e.g., §§ 3111, 3111.5, 304, 3114-3116, 3123, 3128-3140, 3143-3154.) Mechanics' liens in this action were timely recorded by CSCAC on the El Capitan property, and foreclosure was sought in this action as a means of collecting the trust fund contributions still owed.

APPLICATION OF SECTION 3111 VERSUS PREEMPTION BY ERISA.

Section 3111 provides:

> "For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which Payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on Particular real property shall have a

lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement."

The pertinent portions of ERISA Provide:

"[T]he provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." (29 U.S.C. § 1144, subsec. (a); ERISA § 514, subsec. (a).)

"The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

"The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." (29 U.S.C. § 1144, subsecs. (c)(1) & (2); ERISA § 514, subsecs. (1) & (2).)

According to El Capitan, section 3111 is preempted by the above quoted provisions of ERISA. The question of preemption was vigorously researched and briefed in the trial court. Subsequent to the trial court's granting of the demurrer and entry of judgment, Division One of the First Appellate District filed its opinion in *Carpenters Health & Welfare Trust Fund v. Parnas Corp.* (1986) 176 Cal. App.3d 1196. The *Parnas* court reached the opposite result as that reached by the trial court in this case. According to *Parnas*, section 3111 is not preempted by ERISA.

El Capitan took issue with the *Parnas* case and urged it not be followed by this court. In reply, CSCAC argued *Parnas* was correctly decided and should be followed. We agreed with CSCAC, applying *Parnas* and *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450.

We studied El Capitan's criticisms of the *Parnas* rationale and concluded *Parnas* made the proper distinction between federal

substantive law relating to covered plans and state remedies to enforce the rights arising from such plans.

In *Pilot Life*, the issue before the court was phrased by Justice O'Connor as follows:

> "This case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U.S.C. § 1001 *et seq.*, preempts state common law tort and contract actions asserting improper processing of a claim for benefits under an insured employee benefit plan." (*Pilot Life, supra*, 107 S.Ct. at pp. 1550-1551.)

The employee, Dedeaux, received a work-related injury. His employer had an employee disability insurance plan through Pilot Life. Dedeaux sought permanent disability status; nevertheless, his benefits were terminated after two years. Subsequently they were reinstated and terminated several times over another three-year period. (*Id.* at p. 1551.)

Ultimately, Dedeaux filed a diversity action in federal court. He alleged three causes of action based upon state law (tortious breach of contract; breach of fiduciary duties; fraud in the inducement), rather than any cause of action available to him under ERISA. (*Id.* at p. 1551.)

Pilot Life's motion for summary judgment was granted after the district court found all the state claims to be preempted. The fifth circuit reversed, relying upon *Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 1724. Eventually, the Supreme Court reversed, finding preemption. (*Pilot Life, supra*, at pp. 1551-1558.)

Although the court in *Pilot Life* was concerned with state causes of action, it discussed remedies at some length. The opinion cannot be read without concluding the high court was purposely broad in its view of preemption. We quote a few such passages which combine to preclude us from looking for distinctions between substantive law and remedies.

> "To summarize the pure mechanics of the provisions quoted above: [29 U.S.C. § 1144, subsecs. (a) and

(b)(2)(A)] If a state law 'relate[s] to . . . employee benefit plan[s],' it is pre-empted. § 514(a). . . .

" '[T]he question whether a certain state action is pre-empted by federal law is one of congressional intent. " 'The Purpose of Congress is the ultimate touchstone.' " ' [Citations.] We have observed in the past that the express pre-emption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.' [Citations.]" *Pilot Life, supra*, at p. 1552.)

In its discussion of Dedeaux's state law bad-faith-claim, the court continued:

"The Solicitor General, for the United States as *amicus curiae*, argues that Congress clearly expressed an intent that the civil enforcement provisions of ERISA § 502(a) be the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress. Brief for United States as *Amicus Curiae* 18-19. We agree. The conclusion that § 502(a) was intended to be exclusive is supported, first, by the language and structure of the civil enforcement provisions, and second, by legislative history in which Congress declared that the pre-emptive force of § 502(a) was modeled on the exclusive remedy provided by § 301 of the Labor-Management Relations Act (LMRA), 61 Stat. 156, 29 U.S.C. § 185.

"The civil enforcement scheme of § 502(a) is one of the essential tools for accomplishing the stated purposes of ERISA. . . .

" . . . . . .

"In sum, the detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy

> choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 'The six carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.' (*Russell, supra*, at 146, 105 S.Ct., at 3093 (emphasis in original)." (*Pilot Life, supra*, 107 S.Ct. at pp. 1555-1556, fn. omitted."

Still later, the court stated:

> "The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, *indeed the entire comparison of ERISA's § 502(a) to § 301 of the LMRA, would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws.*" (*Id.* at p. 1558.)

Although a state law providing for mechanics' liens is a special statutory collection alternative, that remedy cannot be divorced from the substantive contractual rights which create the debt. To be effective, the lien claim depends upon the validity and consequences of an agreement of some sort. In this instance, a labor agreement is the subject matter. Failure of one party to the Plan to make contributions results in the denial of benefits to the others. Federal remedies are provided. Mechanics' lien rights are omitted.

Along this same line of thinking is the very recent appellate court decision in *Cairy v. Superior Court* (1987) 192 Cal.App.3d 840. In *Cairy* the defendant, Cairy, was charged with violation of Labor Code section 227: willful, and with intent to defraud, *failure to make payment to a pension fund as required by a collective bargaining agreement.* (*Id.* at p. 842.) The defendant's demurrer to the information on the grounds of preemption was overruled. After concluding ERISA preempted Labor Code section 227, the Court of Appeal issued a peremptory writ of

mandate directing the lower court to vacate its order overruling the demurrer, and instructed the court to make a new order sustaining the demurrer. (*Id.* at pp. 845-846.)

The *Cairy* court uses an expansive approach to preemption consistent with *Pilot Life*:

> "Section 227 'regulates' the terms end conditions of employee benefit plans to the common sense meaning of that word. 'Regulate' means 'to control or direct according to a rule.' (American Heritage Dict. (1976) p. 1096.) It is axiomatic, therefore, the power to regulate includes the power to enforce. (See, e.g., *Pac. Legal Found. v. State Energy Resources, etc.* (9th Cir. 1981) 659 F.2d 903, 926.) Here the state is attempting directly to regulate the terms and conditions of a pension plan by using its criminal law to obtain compliance with those terms end conditions (i.e., to 'control or direct' an employer's behavior in relation to terms and conditions of the pension plan). Thus, section 227 is preempted by ERISA unless it falls within the exception for 'generally applicable' criminal laws of the state." (*Cairy v. Superior Court, supra*, 192 Cal.App.3d at p. 843.)

We agree a similar interpretation is required in our case. The state is attempting to "regulate" the terms and conditions of a pension plan through the use of its mechanics' lien laws. (See also *Lembo v. Texaco, Inc.* (1987) 194 Cal.App.3d 531.) The state's mechanics' lien laws may not be used to supplement or supplant the civil enforcement scheme developed under ERISA. (*Pilot Life, supra*, 107 S.Ct. at p. 1558.)

The judgment is affirmed. Respondent to recover costs of appeal.

WOOLPERT
Acting P.J.

WE CONCUR:

BALLANTYNE
J.

VARTABEDIAN
J.*

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* Assigned by the Chairperson of the Judicial Council.

Appendix E

Relevant Statutory Provisions

Civil Code § 3111. Trust fund lien under labor agreement

For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

Civil Code § 3110. Persons entitled to lien; agent of owner

Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor of furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams, or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise. For the purposes of this chapter, every contractor, subcontractor, sub-subcontractor, architect, building, or other person having charge of a work of improvement or portion thereof shall be held to be the agent of the owner.

Section 514(a) of the Employee Retirement Income Security Act, 29 U.S.C. § 1144(a) Other Laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supercede any and all State laws insofar as they may not or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

Section 514(c) of the Employee Retirement Income Security Act, 29 U.S.C. § 1144(e) Other Laws

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

Section 515 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1145 Delinquent Contributions

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such statement.

Section 502(a) of the Employee Retirement Income Security Act, 29 U.S.C. § 1132(a) Civil Enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary, or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to inforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

Section 502(g) of the Employee Retirement Income Security Act of 1974, As Amended, 29 U.S.C. § 1132(g) Civil Enforcement

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter other than an action described in paragraph (2) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan—

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of—

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

Section 301(a) of the Labor and Management Relations Act of 1947, As Amended, 29 U.S.C. § 18(a), Suits by and against labor organizations

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.